# The Solicitors' Journal

Vol. 105 No. 30 [pp. 635–654] JULY 28, 1961 [One shilling and ninepence

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THE
# SOLICITORS' JOURNAL

VOLUME 105
NUMBER 30

## CURRENT TOPICS

### Discretion in Sentencing

EARL WINTERTON recently asked the LORD CHANCELLOR about the subjection of the courts to "outside influence" in relation to the sentences they impose. The Lord Chancellor agreed that the determination of sentences in criminal cases is, subject to any limitations imposed by law, entirely within the discretion of the courts, but emphasised that justice is not a cloistered virtue and that the administration of justice is subject to criticism just like anything else in our free society. Thus, while we resist any attempt by the executive to direct judges and magistrates what sentences to impose, we see no reason why ministers should not criticise the judiciary for the severity or leniency of their sentences. Parliament, being supreme, is under no inhibition about destroying the discretion of the judiciary. The Road Traffic Bill, which has fallen by the wayside until the next session, sought to limit the discretion of the courts in various ways. We should use the interval to consider how far these proposed inroads on the independence of the judiciary would be justifiable and why.

### Souvenir—U.S.A.

THOSE of us who visited the United States last year have received from the American Bar Association a beautiful souvenir album commemorating their eighty-third annual meeting at which we were privileged to be guests. The photographs are magnificent, especially a large panoramic view of the Convocation at the Sylvan Theatre in Washington on that sizzling August day. Whenever we feel cold, physically or emotionally, we shall open the album and study that picture in particular. After all the hospitality we enjoyed we never expected to have pictures as well and we are very grateful to the American Bar Association for their gift.

### Pay for Articled Clerks

SOLICITORS already paying articled clerks, or considering making such payments, will be interested to learn of the recommendations on the subject made by the Law Society of Scotland to their members. The council of that society recommend payment of annual salaries on a sliding scale changing according to which year of training the apprentice is completing. The scale varies from £300 to £500 in the case of a law graduate, from £200 to £300 for an arts graduate, and from £150 to £350 for a non-graduate student completing a full five years' period of training in a legal office. Particulars of the recommendations are set out in the July issue of the *Journal of the Law Society of Scotland*.

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## Bill for Convenience

Is our generation mealy-mouthed compared with our forbears? The answer may well be in the affirmative, but evidence to the contrary was provided last week by the somewhat long short title of the Bill introduced by Mrs. BARBARA CASTLE, namely, the Public Lavatories (Abolition of Turnstiles) Bill. The laudable object of the Bill is to secure that every local authority shall remove, by not later than 30th June, 1962, any turnstile restricting access to any public lavatory or sanitary convenience under its control. Further, after the passing of the Bill local authorities will be prohibited from erecting such turnstiles. The fair sex have always suffered the disadvantage of being required literally to spend more pennies than their menfolk. Although this position seems likely to continue, it is only right that at least the extra inconvenience of the turnstiles shall be removed.

## What is "Bread"?

DURING the continuance of the Bread Order, 1953, the provisions of s. 6 (2), (3) of the Sale of Food (Weights and Measures) Act, 1926, are suspended. Section 6 (2), (3) of the 1926 Act provides, *inter alia*, that no loaf of bread shall be sold unless its net weight is one pound or an integral number of pounds, but art. 3 (1) of the Bread Order, 1953, stipulates that: "No person shall sell or have in his possession for sale any loaf or roll of bread (including any bap) unless its weight is 14 ounces or a multiple of 14 ounces or is 10 ounces or less." For this purpose, "bread" is said to include "rolls, but does not include fruit loaves or bun loaves" (art. 2). In a recent case in the North London Magistrates' Court it was alleged that some bakers sold four loaves of "bread" which were deficient in weight. The loaves in question were loaves of cholla which are used by people of the Jewish faith for the Friday night benediction and on religious festivals and the court was required to decide whether cholla was "bread" within the meaning of the Bread Order, 1953. It seems that cholla is baked in the shape of a plaited loaf and there was also evidence that, in addition to the ingredients of ordinary bread, it contains about 5 per cent. each of sugar, eggs and fat. The magistrate, Mr. FRANK MILTON, held that cholla is not "bread" for the purpose of the Bread Order, 1953, and the summonses were dismissed. As far as we are aware there is no reported decision as to the meaning of "bread" in this context but decisions as to the meaning of earlier legislation suggest that "bread" means something which to the eye is liable to be confused with ordinary household bread (*Bailey* v. *Barsby* [1909] 2 K.B. 610) while differences in the quality of materials are relatively unimportant (*V. V. Bread Co.* v. *Stubbs* (1896), 74 L.T. 704). In *Colthoff* v. *U.S.* (1930), 17 C.C.P.A. 388, the American Court of Customs and Patent Appeals found that "Holland rusks," though leavened with yeast, were not "bread" within s. 201 of the Tariff Act, 1922, and the court expressed the view that for these purposes "bread" includes only well-known commercial bread. These cases would seem to support the decision that cholla is not "bread" within the meaning of the Bread Order, 1953.

## Disposal of Consecrated Land

AT a time when there is a shortage of land for building, especially in prominent positions in our cities and towns, the findings of the Committee on Deconsecration (Report of the Committee on Deconsecration; Church House, Book Shop, 2s.), which was appointed by the Archbishops of Canterbury and York (Dr. FISHER and Dr. RAMSEY) to consider generally the question of deconsecration of consecrated land and buildings, are obviously of considerable importance. There are many consecrated churches and churchyards which, for one reason or another, are of no further use to the church but, as the law now stands, they cannot be disposed of for secular purposes except by the authority of an Act of Parliament. Such land or buildings could often be sold for a very high price, but consecration in large measure prevents the profitable disposal of redundant church property, even though the proceeds of such a sale would enable the building of other churches in new areas where they are badly needed. In the view of the committee, the church, which is in the position of trustees of consecrated land or buildings, should hold the property as stewards in trust for God and have power to dispose of it when God's purposes are better served thereby, such proceeds as there may be from the disposition being held in trust for a godly purpose. In every case, the question should be: "What would prudent trustees do in the best interests of the beneficiary if they had freedom of action?" Accordingly, the committee advocate the introduction of general legislation to make it possible, wherever necessary, to relieve land and buildings, including burial grounds, of the effect of consecration while maintaining the principle that land once given to God (this is the essence of consecration) must, itself or in its proceeds, be devoted to godly purposes.

## Enlivening the Law Reports

WE are very pleased to see that after many years of decent obscurity the law reports in *The Times* are being granted the dignity of headlines which, although not as large as those which appear on the centre page in times of stress, rival those accorded to Parliament both in size and content. This is another step towards parity of esteem.

## The Public Trustee

SIR PRIDHAM BAULKWILL, C.B.E., the Public Trustee since 1956, is retiring on 30th September, having served in the Public Trustee's Office for over forty years. He is to be succeeded by Mr. CHARLES RONALD SOPWITH, who is at present a principal assistant solicitor in the Solicitor's Office of the Board of Inland Revenue. Mr. Sopwith, who is fifty-five, qualified as a chartered accountant in 1928 and was admitted in 1938, obtaining first-class honours in The Law Society's intermediate and final examinations. He joined the Inland Revenue's Solicitor's Office after the 1939–45 war.

## Remarkable Service

IT was with no little astonishment that we learned that Mr. E. G. SERGEANT, O.B.E.—of Stamp Duties fame—had, at 79, completed over half a century of service in the Solicitor's Office of the Inland Revenue. Mr. Sergeant who was admitted in 1907 and joined the Inland Revenue in 1910, is to retire on 1st August next. In view of his status as a recognised authority on the law of Stamp Duties it is perhaps appropriate that he should also be renowned in the world of chess. We salute him and wish him well in his retirement.

# FUNDAMENTAL BREACHES AND EXCLUSION CLAUSES

In a recent hire-purchase case before the Court of Appeal the learned judges were examining the hire-purchase agreement and counsel pointed out that the remaining terms of the agreement were set out on the other side of the document; at this one of the learned judges was heard to remark that the agreement appeared to be so one-sided that he was surprised to find it had been set out on both sides of the document: such is the modern meaning of the freedom of contract doctrine. There are two corollaries to the doctrine: the first is that if a person signs an agreement he is presumed to have assented to the printed terms of the agreement even if he has not read them (see *L'Estrange* v. *F. Graucob, Ltd.* [1934] 2 K.B. 394), and secondly not even equity will mend a man's bargain for him. There are, however, several legitimate methods of getting round exclusion clauses.

## Three in one

One of these methods is to show that there has been a fundamental breach of contract by the party who is relying on the clause, which disentitles him from relying on it. Lord Denning in the Court of Appeal said "a breach which goes to the root of the contract disentitles the party from relying on the exempting clause" (see *Karsales (Harrow), Ltd.* v. *Wallis* [1956] 1 W.L.R. 936, at p. 941). The learned judge described (at p. 940) how to ascertain whether there has been such a breach:—

> "The thing to do is to look at the contract apart from the exempting clauses and see what are the terms, express or implied, which impose an obligation on the party. If he has been guilty of a breach of those obligations in a respect which goes to the very root of the contract, he cannot rely on the exempting clauses."

This general principle would appear from these statements to be clear, but in fact on a closer examination of the authorities it becomes apparent that there is not just one method of avoiding an exclusion clause involved in this statement of principle, but three different methods. This fact, it is submitted, is of importance, but is rarely acknowledged by the courts because the same cases are often cited for each of the three separate principles. A party becomes disentitled from relying on an exclusion clause in this connection: (1) if he has fundamentally failed to perform the contract at all; (2) if he has failed to fulfil an express obligation placed on him by the contract; and (3) if he has been in breach of an implied term of the contract which is fundamental to the contract. These three separate principles will now be examined.

### 1. *Fundamental failure to perform the contract*

Devlin, J., as he then was, said in *Smeaton Hanscomb & Co., Ltd.* v. *Sassoon I. Setty Son & Co.* (*No.* 1) [1953] 1 W.L.R. 1468, at p. 1470:

> "I do not think that what is a fundamental term has ever been closely defined. It must be something, I think, narrower than a condition of the contract, for it would be limiting the exceptions too much to say that they applied only to breaches of warranty. It is, I think, something which underlies the whole contract so that, if it is not complied with, the performance becomes something totally different from that which the contract contemplates."

The learned judge then gave the following illustration: if a seller delivers to a buyer pine logs instead of mahogany logs as he contracted to do, then "the performance becomes something totally different from that which the contract contemplates." It is submitted that what this means is that there has been a failure of consideration in the contract. The effect of this is that there never was a valid contract and the party in default cannot rely on any exclusion clause. It is clear from *Rowland* v. *Divall* [1923] 2 K.B. 500, that as the innocent contracting party never got what he was entitled to receive under the contract the right to rescind *in toto* cannot be lost by any implied affirmation of the contract.

### 2. *Failure to fulfil an express obligation*

Scrutton, L.J., expressed this principle by saying: "You cannot rely on the conditions which were only intended to protect you if you carried out the contract in the way in which you had contracted to do it" (see *Gibaud* v. *Great Eastern Railway Co.* [1921] 2 K.B. 426, at p. 435). A good example of the operation of this principle is afforded by the decision of Lewis, J., in *Bontex Knitting Works, Ltd.* v. *St. John's Garage* (1943), 60 T.L.R. 44 (subsequently approved by the Court of Appeal: [1944] 1 All E.R. 381*n*). The plaintiffs employed the defendants to deliver goods to customers. It was a term of the agreement between the parties that the goods would be delivered "forthwith and immediately" and there was an exclusion clause. The defendants' driver, after loading the goods on to his lorry, stopped at a café for a meal, leaving the lorry unattended for an hour. During this time the goods were stolen. Lewis, J., accepted (at p. 47) counsel's argument that an exclusion clause only applies "while the contract is in existence and if there is a breach of the contract by the defendants, any clause on which the defendants could rely to save themselves from liability goes." He then held that as the defendants had not done what they had expressly undertaken to do—namely, to deliver forthwith and immediately—they could not rely on the exclusion clause. (See also, e.g., *Lilley* v. *Doubleday* (1881), 7 Q.B.D. 510; *Sze Hai Tong Bank, Ltd.* v. *Rambler Cycle Co., Ltd.* [1959] A.C. 576.)

The leading case of *Alexander* v. *Railway Executive* [1951] 2 K.B. 882, was decided on this ground. Devlin, J. (at pp. 889–90), however, made this important statement. He said if there was such a breach giving the innocent party the right to rescind—

> "then, unless and until, with full knowledge of all the facts, he elects to affirm the contract and not to rescind it, the special terms of the contract go and cannot be relied upon by the defaulting party."

This would seem to mean that if the innocent party has expressly or impliedly affirmed the contract in any way this may permit the defaulting party to rely on the exclusion clause. It is submitted that what the learned judge really meant was that the innocent party could not rescind the contract *in toto* but was limited to sue in damages. This is, then, an important distinction from the situation where there has been a fundamental failure to perform the contract.

### 3. *Breach of implied term fundamental to the contract*

The second principle stated above would seem to establish that a party could not rely on an exclusion clause if he had merely deviated from his express contractual obligation; thus it would appear that a breach of a condition would be sufficient to prevent the party relying on the exclusion clause. As far as implied terms are concerned, however, the authorities seem to establish that a mere breach of an implied condition may not be sufficient. The courts refer to the breach of a

" fundamental contractual obligation," which would appear to be something stronger than a breach of condition. The breach must go to the root of the contract (see *J. Spurling, Ltd.* v. *Bradshaw* [1956] 1 W.L.R. 461). *Karsales (Harrow), Ltd.* v. *Wallis* [1956] 1 W.L.R. 936, is an example of this principle. The question which has hitherto remained unanswered is whether the innocent party is limited to damages only and not to complete restitution if he has affirmed the contract expressly or impliedly.

**" Congeries of defects "**

The recent case of *Yeoman Credit, Ltd.* v. *Apps* [1961] 3 W.L.R. 94, is an important authority on hire-purchase law in several respects (see the article at p. 29, *ante*), and not least on exclusion clauses. The defendant bought a car on hire-purchase terms from the plaintiff. The printed contract between the parties contained the inevitable exclusion clause. The defendant paid the initial deposit but when the car was delivered he found it defective in many respects—" brakes, clutch, and steering were terrible "—and it had such senile performance that it took one and half hours to get three or four miles. He complained to the plaintiffs but paid three monthly instalments nevertheless. After that he refused to pay further instalments, and the plaintiffs determined the hiring agreement and sued him for arrears of instalments and for damages. The defendant counter-claimed for the recovery of his deposit and instalments paid on the ground that the consideration for the agreement had totally failed. The Court of Appeal held that there was an implied " warranty, condition or undertaking " that the car was reasonably fit to be used on the roads and that there were such " a congeries of defects " which " destroyed the workable character of the machine " as to amount to a breach of the fundamental condition and so prevent the plaintiffs from relying on the exclusion clause. The court then went on to hold that, as the defendant had not treated the contract as rescinded but had approbated the contract by paying instalments, there had not been a total failure of consideration and he was liable to pay the fourth instalment, which was due before he rejected the car, and he was not entitled to receive back all the money he had paid, but only damages for breach of the agreement.

The first step is to see into which of the three classes *Apps'* case falls. The subject-matter of the contract was the hiring of the car, and in fact the defendant " had the enjoyment of what he stipulated for " to a certain extent at least. There was not then a complete failure of consideration. The performance was not totally different from that contemplated by the contract. With respect, this is a better ground for saying there was no failure of consideration than the reason given by the Court of Appeal. There was no question of the plaintiffs not having fulfilled any express obligation, so the case falls within the third class—a breach of an implied term which was fundamental.

The court found that it was a fundamental implied condition in the contract that the car would function and be usable on the road. The nature of this fundamental condition was said by Pearce, L.J. (at p. 104), to be " different in weight and gravity from breaches of condition which would come within the exemption." Thus a series of minor defects taken *en masse* can amount to a fundamental breach of contract. Although a fundamental condition is apparently a different creature from an ordinary condition, it seems to have some of the latter's characteristics, since according to the decision in *Apps'* case the right to rescind for a breach of either kind of condition can be lost if the innocent party has expressly or by his conduct impliedly affirmed the contract.

The result of all this is that there remains only one more step to take before we come to the conclusion that it is impossible to exclude any condition, express or implied, by an exclusion clause. It has already been established that a party cannot rely on an exclusion clause if he has been in breach of an express condition in the contract. Logically, it should follow that a party should also be prevented from relying on an exclusion clause if he has broken an implied condition of the contract. There is no logical reason why a breach of an express condition bars a party from relying on an exclusion clause, whereas in the case of an implied condition it must be a fundamental condition before it operates as a bar. The innocent party, however, having been freed from the exclusion clause, will not be able to rescind the contract *in toto* unless there has been a total failure of consideration or he has not affirmed the contract in any way.

All that remains now is for the courts to take this last logical step and exclusion clauses will only serve to exclude breaches of warranty.

ANTHONY SCRIVENER.

## " THE SOLICITORS' JOURNAL," 27th JULY, 1861

ON 27th July, 1861, THE SOLICITORS' JOURNAL discussed the state of business in Chancery: " We have now before us the Chancery cause list for sittings after Trinity Term, 1861 . . . The result of our inquiry is to inform us that not only every appeal ready for decision on 20th June, but many others that have since come into the papers, and probably every one ready for hearing will have been disposed of before the Court of Appeal rises for the Long Vacation . . . Every cause contained in the list . . . set down before the Master of the Rolls for hearing was decided probably on an average of a month after it had been set down for hearing and of less than a fortnight after it got into the cause list. The Vice-Chancellor Stuart rose on Thursday, having got through the whole of his list. In two branches of the court only is there any arrear and even in these it is by no means formidable. The number of causes set down before Vice-Chancellor Wood is usually very great and he has yet been unable to dispose of all the causes set down before him. Vice-Chancellor Kindersley's court is certainly not famous for speed, but suitors are aware of this and do not resort there in any considerable numbers; so that, although he has not finished his paper, very few causes remain pending before him. It is sufficiently plain from this short statement that there is no particular pressure of business in Chancery and that when Sir William Atherton advocated the appointment of a Chief Judge in Bankruptcy, on the ground that the equity judges had already more than enough to do . . . he relied upon an argument which is unsupported by the facts."

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### OPTICIANS: LEGAL ASSESSOR

The General Optical Council Disciplinary Committee (Legal Assessor) Rules, 1961 (S.I. 1961 No. 1239), in operation on 17th July, regulate the functions of the legal assessor appointed under s. 16 of the Opticians Act, 1958, to advise the disciplinary committee of the General Optical Council on questions of law arising in disciplinary cases before them.

# ASPECTS OF CHANCERY PRACTICE AND PROCEDURE—IV

## MORTGAGE POSSESSION AND PAYMENT CASES—II

If only payment, and not possession, is sought, an office copy of the notice of appointment filed in default of appearance must also be left at the master's chambers. Where possession is sought there are special requirements which are intended to give the mortgagor every chance of preserving his property and which must be very carefully followed. The plaintiff's solicitors must give the defendant four clear days' notice of the date of the hearing by sending by prepaid letter post addressed to the defendant at his last known address the notice of appointment to hear the originating summons together with a copy of the affidavit in support (without the exhibits). Upon the copy of the affidavit there must be indorsed on the outside a notice in the form prescribed in the Practice Direction. Within two days of posting these documents, the plaintiffs' solicitor must lodge at chambers the original affidavit (and exhibits) indorsed with a certificate signed by the plaintiff's solicitor in the form prescribed in the Practice Direction.

### Two or more defendants

If there are two or more defendants the certificate should make it quite clear that each of the defendants has been given notice of the appointment and sent a copy of the affidavit. It should also be observed that the notice concludes with the name of the plaintiff's solicitor and there has to be a certificate (which sets out the notice) which must be signed. It is not uncommon for the plaintiff's solicitor's name at the end of the notice to be regarded (wrongly) as the signature of the certificate. The plaintiff's solicitor's name should thus appear twice at the end of the endorsement, first as the conclusion of the notice, and then as the signature of the certificate.

If the defendant has not entered appearance he is not entitled to be heard at the hearing of the application, but in practice if he turns up and wishes to ask for time to pay, the master will usually hear him.

In many cases there is no defence, and an order is made at the first hearing, or there is an adjournment to a fixed day and the order is made then. If there is an adjournment to a fixed day there is no need to serve a further notice of the appointment. The appointment is regarded as the same one. If there is an adjournment generally (without a day being fixed for the further hearing), notice of the restored hearing will have to be given. If the defendant has entered appearance, the notice of the restored hearing will have to be served in the same way as the notice of the original appointment: and if a further affidavit has been put in, a copy of that affidavit must be served with it. If there has been a year's lapse since the last proceeding, a notice of intention to proceed will have to be served as a preliminary step to further action.

### Practice Direction of 1958

A Practice Direction was issued in 1958 ([1958] 1 W.L.R. 655) to clear up the position where possession is sought and the defendant is in default of appearance and the hearing of the application was adjourned generally. The notice of the restored hearing and the notice of intention to proceed (if appropriate) have to be sent by prepaid letter post to the defendant at his last known address (instead of being filed in default under Ord. 67, r. 4). If there is a further affidavit put in by the plaintiff, a copy of that must be sent in similar manner; and in that case there must be a certificate indorsed on the outside fold of the original of the further affidavit in the form that is used on the first affidavit (with any necessary variations). If there is not a further affidavit which can be indorsed, service of the notice or notices will (unless some other direction is given by the master) be evidenced by a separate certificate entitled in the proceedings signed by the plaintiff's solicitor.

### Delivering up possession of the property

Orders for possession normally provide that the defendant shall deliver up possession of the property comprised in the mortgage or charge within twenty-eight days after service of the order. Sometimes a longer time is given, as, for instance, where the mortgagor can show that there are serious negotiations on foot for a sale: sometimes, as, for instance, where the mortgagor has disappeared and the property is likely to deteriorate rapidly, a short time is given. As the order requires an act to be done, it should be indorsed with the penal notice in accordance with Ord. 41, r. 5, before service.

If the defendant does not duly deliver up possession after he has been served with the order, the plaintiff is entitled to sue out a writ of possession on filing an affidavit showing due service of the order and that it has not been obeyed.

Sometimes, after the sheriff has obtained possession for the plaintiff under a writ of possession, the defendant forcibly or by stratagem resumes possession. That is a contempt of court in respect of which the defendant could be committed to prison. Where the defendant has acted in that way the normal procedure is to apply ex parte to the master on an affidavit stating the facts and get an order for the issue of a writ of restitution. If the defendant is still recalcitrant, committal proceedings would be appropriate.

It was mentioned above that an order for substituted service might be necessary in the case of the writ or originating summons. A defendant may try to evade service of the order for possession. Every effort should be made to serve him in the usual way, but if he is deliberately keeping out of the way, or cannot be found, an order for substituted service of the order will be made. If his whereabouts are unknown, or there are circumstances of that kind, there may be service by advertisement in a paper or papers.

If proceedings are started by originating summons when a writ should have been used, these proceedings may be terminated and the plaintiff directed to issue a writ. But it may be that directions will be given which make it possible for writ procedure to be substantially followed notwithstanding that an originating summons has been used. In the case of *Lloyds Bank, Ltd.* v. *Margolis and Others* [1954] 1 W.L.R. 644, where part of the claim might have been statute-barred if the originating summons proceedings had been dismissed or stayed and a writ issued, the judge directed that the plaintiffs should deliver points of claim and the defendants should deliver points of defence, and all the subsequent steps corresponded to those in a writ action.

(*To be continued*)

H.

# COMPULSORY AFFIRMATION

THE oath taken by a witness before giving evidence is too often a muttered semi-nullity. "Hold up the book in your right hand and read the words on the card," says the usher or the county court bailiff or the clerk of the magistrates, or whoever it may be. I never did like that card. It means that the witness looks down. When I sit as coroner, I always ask the witness to hold the testament up and look straight at me. Then I give him the words of the oath myself and he repeats them after me. He may hold my eye or his may flicker.

One famous judge who was with us until quite recently insisted upon the whole court not only keeping quiet but also keeping still while every oath was administered. I have seen him explode at a barrister who whispered to a colleague while a witness was repeating the oath. In most courts the standard is not so high. Policemen bring to their oaths a certain *panache* as though it were a form of rifle drill. Debt collecting agents whisper it. Frightened witnesses bungle it.

The real essence of the oath is that it is a reminder of the solemnity of the occasion and that it can turn mis-statement into perjury. It can be taken in many ways. A Christian will raise the New Testament and a Jew the Old Testament, a Mohammedan the Koran. A Sikh will use the Granth. A Chinese will break a saucer. I have heard a child sworn in with the words: "Now, sonny, do you understand that you have got to tell me the truth?" and sometimes I have thought the gasp, the blink and the whispered "Yes" one of the most reliable oaths ever taken.

A large class of people prefer not to take the oath but to affirm. A recent change has taken place in the law regarding affirmation which is of importance to everyone who has to handle witnesses.

Up to now the rule has been (see the Oaths Act, 1888, s. 1) that any person who objects to being sworn and states as the grounds of his objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief, shall be permitted to make affirmation instead. This has become increasingly common but the essential point is that the option lies upon the witness. The change that has now been made by the Oaths Act, 1961, is that the option has been transferred to the court. A judge, a magistrate or a coroner can now require a witness to affirm. This is one of the numerous straws that remind us of how much colour has been blown into this country on the winds of change. Occasionally the business of a court is seriously delayed by the arrival of a witness who is quite willing to swear an oath but in some unusual form. There then develops a hunt for a Koran or a Granth or some other even rarer book or for a not too expensive saucer. Not every court is stocked with Korans and saucers. This is where the new Act comes in. To avoid delay, the court can say to the witness: "You will affirm," the court thus taking the initiative in telling the witness that he will affirm rather than swear. It will probably save a lot of time but I think we shall all miss those moments of drama when nobody could find a saucer.

E. A. W.

# OVER THE GARDEN HEDGE—II

IN the earlier moiety of this article (p. 623), I considered at some length both the practical difficulties where a hedge marks the boundary of land and the position in registered conveyancing where the hedge, in fact, does so incorrectly so that rectification of the register and a claim for indemnity follow. There is, of course, no like insurance fund available in unregistered conveyancing against which to claim (though the implied covenants for title may soften the blow), and since the practical difficulties are the same it may be useful to discuss some of the principles which are to be applied where a hedge is involved in order to ascertain where precisely is the correct boundary of land conveyed.

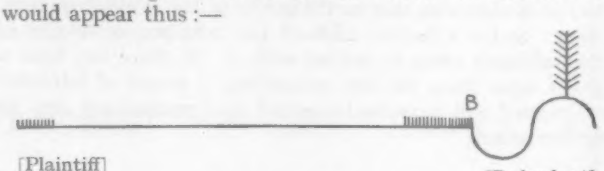
### Rebuttable presumption

The original usage of the word "hedge" meant, I believe, a bank of earth and not the customary bushes growing thereon, which form the "hedgerow." (In any case, in the country at least, such a bank of earth is a common concomitant of the bushes.) Therefore, where there is a hedge according to this usage there will also be a ditch from which, of course, came the earth forming the bank. Where two properties are divided by such a hedge and single ditch there is a rebuttable presumption as to ownership.

> "The rule is this: No man making a ditch can cut into his neighbour's soil, but usually he cuts it to the very extremity of his own land; he is of course bound to throw the soil which he digs out upon his own land; and often, if he likes, he plants a hedge on the top of it; therefore if he afterwards cuts beyond the edge of the ditch, which is the extremity of his land, he cuts into his neighbour's land,"

per Lawrence, J., in *Vowles* v. *Miller* (1810), 3 Taunt. 137, 138.

The operation of the presumption expressed by this rule was recently illustrated, as a minor point, in *Weston* v. *Lawrence Weaver, Ltd.* [1961] 2 W.L.R. 193; p. 155, *ante*. The judgment of Lawton, J., in the case was reported only on the very interesting question of whether a dominant owner of a right of way had a right of action against another dominant owner for physical damage, caused by excessive user, to the servient tenement, which was a private road separating the plaintiff's land from the defendant's. This major question (decided in the negative) is not relevant to this article, but an incidental question which arose is relevant. The private road was about 10 feet wide with a narrow grass verge on the plaintiff's side and a wider grass verge with a shallow ditch, bank and hedge on the defendant's side. A cross-section would appear thus:—




The owner of the soil of the private road was unknown and there was nothing, beyond mention of the right of way, in the conveyance either to the plaintiff or to the defendant which dealt with ownership. In the course of building operations the defendant removed the bank and hedge and filled in the ditch. The plaintiff in the action, *inter alia*, claimed that the defendant had created a nuisance on the right of way since the removal was wrongful, and in addition

to damages requested an order that the defendant replace the bank and replant the hedge, though this request was not proceeded with at the hearing.

Lawton, J., held (at p. 196)—

> "that the plaintiff was not entitled to recover damages for nuisance caused by the removal of the hedge and bank and the filling in of the ditch on the [defendant's] side of the private road, which hedge, bank and ditch his lordship held belonged to the defendant company."

It will be noted that, though reasons were not given, this judgment correctly applies the rule stated by Lawrence, J., and quoted above, the defendant's boundary being at "B" on the diagram.

For the rule to be applied, there must in fact be a ditch, i.e., an artificial excavation. The presumption does not arise if there is a natural watercourse (*Marshall* v. *Taylor* [1895] 1 Ch. 641), nor if there is no ditch at all (*Collis* v. *Amphlett* [1920] A.C. 271—no entitlement to "ditch width"). Further, even if the presumption does arise it may be rebutted by evidence to the contrary, although since the presumption is a strong one, the rebutting evidence must be clear: *Henniker* v. *Howard* (1904), 90 L.T. 157.

### Conclusive plans

A fairly recent illustration both of the non-arisal of the hedge and ditch presumption and of its rebuttal occurred in *Davey* v. *Harrow Corporation* [1958] 1 Q.B. 60 (C.A.) (now of television fame—see the B.B.C. documentary "The Lawyers"). In that case the plaintiff claimed damages for nuisance in respect of subsidence caused by the penetration of the roots of elm trees. The plaintiff alleged that the boundary to his plot was a concrete post and wire fence. This fence had been erected by the plaintiff's predecessor-in-title as close in as possible to the nearside of a hedge which bounded the plot on that side and which stood on a low bank on the far side of which was a ditch. The elm trees grew on the bank.

Thus, in the absence of evidence to the contrary, the stage was set for the application of the hedge and ditch presumption, and at first instance it was, in fact, applied by Sellers, J., who held that the plaintiff had not proved that the elm trees belonged to the defendants. However, further evidence was admitted before the Court of Appeal, who, in a comparatively short judgment of the court read by Goddard, L.C.J. (much of which judgment does not concern us), reversed Sellers, J. In the first place, evidence was given of a meeting between the plaintiff's predecessor in title and a representative of the defendants at which it was agreed that the defendants should have the hedge and that the post and wire boundary fence should be as near thereto as possible. Thereafter the defendants always treated the hedge as theirs until the present action. It was held that this evidence effectually displaced the presumption based on the position of the ditch.

In the second place, it was shown that in the various conveyances which formed the plaintiff's title, the parcels conveyed were always described by reference to the ordnance survey map. The point here is that there is no room for the hedge and ditch presumption if the correct position of the boundary can be established from the title deeds, for example, if the plans referred to therein are sufficiently precise. The evidence of an official from the Ordnance Survey Office was that the line on the map delineating the boundary in dispute indicated the centre of the existing hedge.

> "This is in accordance with the invariable practice of the survey as was proved in *Fisher* v. *Winch* [1939] 1 K.B. 666, and in our opinion, after that case and this, courts in future can take notice of this practice of the Ordnance Survey as at least prima facie evidence of what a line on the map indicates,"

per Goddard, L.C.J., at [1958] 1 Q.B., p. 69. Reference may also be made on this point to the judgment of Cassels, J., at first instance in *Rouse* v. *Gravelworks, Ltd.* [1940] 1 K.B. 489, reported at p. 493, where he held that the hedge and ditch presumption

> "was rebuttable by the production of the title deeds, and, in this case, the title deeds clearly showed by a particular reference to the Ordnance Survey Map the position of the boundary line on the middle line of the hedge."

Although Cassels, J., was in fact reversed by the Court of Appeal, there was no appeal against this part of his judgment.

### Filed plans

Since parcels in conveyances are very often described by reference to the ordnance survey map, or else to a plan based thereon, the latter point mentioned in *Davey* v. *Harrow Corporation, supra*, is important as it would appear that in such cases the hedge and ditch presumption can never arise. It is possible that the point is of even greater importance in registered conveyancing than in unregistered conveyancing. By r. 98 of the Land Registration Rules, 1925, and form 19 in the schedule thereto, a Transfer of Freehold Land (Whole) is of "the land comprised in the title above referred to." This, of course, involves a reference to the filed plan. Rule 272 of the 1925 Rules provides that "the ordnance survey map shall be the basis of all registered descriptions of land." Even where the transfer is of Freehold Land (Part) it does not always follow that a new plan is incorporated. A note to form 20 states that—

> "where sufficient particulars (by parcel number or otherwise) to enable the land to be fully identified on the General Map, Ordnance Map, or Filed Plan, can be furnished without the special plan, such particulars may be introduced into the form instead of the reference to a plan."

Where there is, in fact, a hedge, it would seem that this note will usually be applicable.

It appears to have been inferred from the above (e.g., by F. R. Crane in a case note in 21 Conv. (N.S.) at p. 303) that the hedge and ditch presumption can therefore rarely if ever arise in registered conveyancing. This view overlooks, it is thought, the "general boundaries rule" contained in r. 278 of the 1925 Rules, dealt with in the earlier part of this article, which appears to leave the door wide open to all conceivable presumptions. Also there is provision for revision and correction of the ordnance survey map and of plans and for resolving conflicts (see rr. 280, 284 and 285 of the 1925 Rules).

### False plans

Finally, the maxim of construction called *falsa demonstratio non nocet*, in so far as it may apply to the subject of this article, will be mentioned. Provided that there is no conflict with the words of the parcels, and that the plan referred to is clear, it is generally assumed (as it was in *Davey* v. *Harrow Corporation, supra*) that there is no room for any presumptions relating to the position of boundaries, such as the hedge and ditch presumption, to arise. However, it is submitted that room may be still found if the circumstances can be stretched to permit the application of the *falsa demonstratio* maxim. Normally, of course, this maxim only operates where different parts of the parcels (e.g., words and plan) are inconsistent, one part being rejected as false: *Eastwood* v. *Ashton* [1915] A.C. 900, 914. In other words, there must be a patent contradiction.

Nevertheless, it can be inferred from certain fairly recent cases that the courts are prepared to apply the *falsa demonstratio* maxim in cases where any contradiction may be

thought hardly patent, but rather latent, perhaps even subjective. Much the same result as an application of the maxim was achieved in *Hopgood* v. *Brown* [1955] 1 W.L.R. 213, where the Court of Appeal held (possibly with far-reaching implications: see R. H. Maudsley, 20 Conv. (N.S.) at p. 281) that a neighbour was estopped by his predecessor's conduct from contending that the boundary as conveyed, rather than as slightly altered, was the correct boundary. Thus the boundary as conveyed could be said to be treated as *falsa demonstratio*.

Again in *Truckell* v. *Stock* [1957] 1 W.L.R. 161, the result certainly resembled a treatment of boundaries on a plan as a *falsa demonstratio*. In that case the parcels in the conveyance in question referred to the land as "delineated and coloured pink on the plan attached hereto," without including any such qualifying words as "this plan is for identification only." Further, the description in words in the parcels—"the dwelling-house and office being known as No. 45 East Street aforesaid"—was plainly inadequate. Accordingly, the Court of Appeal stated that the description in the plan was the controlling one in case of conflicts (following dicta of Lord Wrenbury in *Eastwood* v. *Ashton* [1915] A.C. 900, 920). Despite this the court was able to hold that certain footings and eaves *not* shown in the plan were passed by the conveyance. There can be no doubt that this was intended by the parties and it might be thought that the court went out of its way to give effect to their intentions. The *falsa demonstratio* maxim, however, was expressly (per Hodson, L.J., at p. 164) not applied; instead the decision was based, first, on the fact that the plan was at ground level only, and second, that the word "dwelling-house" included the footings and eaves.

Lastly, an even more obvious example of the Court of Appeal paying attention to the parties' intentions occurred in *Maxted* v. *Plymouth Corporation*, regrettably reported only in *The Times* of 28th March, 1957, and in [1957] C.L.Y. 243. Here, however, reliance was expressly placed on the *falsa demonstratio* maxim. This case concerned the ownership of half a Devon hedge, which consisted of a bank of earth and stones some feet wide and high topped with bushes, since whoever owned it was liable to the Plymouth Corporation for the cost of making up the street onto which the hedge fronted. The appellant's vendor had owned up to the middle line of the hedge and the question was: what was conveyed to the appellant? This, of course, involved construing the parcels in the conveyance to the appellant and these contained the words

> "all that piece and parcel of land forming the northernmost portion of a field situate at Efford in the City of Plymouth in the County of Devon numbered 109 on the ordnance map . . . which said piece of land is delineated on the plan drawn herein."

The appellant, apparently foreseeing the possibility of road charges, had his architect who prepared the plan draw the boundary at the foot of the hedge, thus deliberately excluding any conveyance of his vendor's half of the hedge. Denning, L.J., commented (see *The Times* report) that he

> "could not imagine that the man who sold this land would have ever intended to keep in his own hands that little strip of Devon hedge, and if it had been drawn to his attention he would surely have done something about it,"

but he added

> "nevertheless, if that was the true construction of the conveyance the court would have to give effect to it."

Despite this latter comment, the Court of Appeal were able to uphold their all too apparent inclination to decide that the appellant's ingenious plan—in both senses—failed. Their lordships looked at the conveyance and plan as a whole, made a comparison with the ordnance survey map referred to, and found that the boundary on the plan had been put ("maybe by design," as Denning, L.J., remarked) in the wrong place. Accordingly, the boundary on the plan was rejected as *falsa demonstratio*, so that the appellant got the whole of the land up to the middle of the hedge and was liable for road charges.

### Full circle

The result of these three decisions, particularly the last mentioned, would appear to be to bring us back to where we came in. The starting point is the operation of the hedge and ditch presumption, already dealt with and illustrated by *Weston* v. *Lawrence Weaver, Ltd., supra*. Next, it is generally stated that this presumption cannot arise where the parcels refer to a plan which, as with an ordnance survey map, clearly shows the boundary along the middle-line of the hedge. Lastly, however, it is submitted that the operation either of the "general boundaries rule" in registered conveyancing or of the *falsa demonstratio* maxim in any case may resurrect the hedge and ditch presumption.

As an illustration, let us take a purchaser of unregistered land on whose conveyance the hedge and ditch presumption operates. If that purchaser later resells and, not unusually, conveys by reference to an ordnance survey map, prima facie he remains the unlucky owner of a ditch and half a hedge. Certainly he will consider himself unlucky if one day he is confronted not just with claims for such things as road charges, but, say, for damages in nuisance, *Rylands* v. *Fletcher* negligence or under the Occupiers' Liability Act, 1957. Therefore, it is suggested that the lead recently shown by the Court of Appeal should be followed, and that the courts should *not* necessarily regard clear plans as conclusive but on the contrary should be astute to apply the maxim *falsa demonstratio non nocet*, thus leaving room for the operation of the hedge and ditch (or any other) presumption. Be that as it may, the ideal method of fulfilling the parties' intentions remains, as before, precision in parcels.

(*Concluded*) J. T. FARRAND.

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### WORLD REFUGEE YEAR

The final total of £9,119,349, resulting from the world refugee year appeal in Britain and announced by the British Committee in a report on 19th July, was more than four times as great as the original target of £2 million. The report states that some of the money has already been spent in settling and housing refugees, some of them in Britain. In the Middle East, Hong Kong and Algeria, centres for vocational training and clinics have been set up. It is hoped that now the European camps will be cleared in two years instead of the ten years previously estimated.

### LAW SOCIETY ART EXHIBITION

After the successful art exhibition held at The Law Society's Hall last autumn, there will be a further exhibition from 24th October to 3rd November in the reading room. This time works of sculpture will be shown in addition to pictures. The Council have again given £50 as prize money and the exhibits will be judged by art experts. The results will be announced at the private view for exhibitors only on 23rd October. Exhibits will again be accepted from solicitors, articled clerks and all members of solicitors' staff. Details concerning the showing of exhibits may be found on the entry form.

## Landlord and Tenant Notebook

# AGRICULTURAL HOLDING: THE TESTS

SEVERAL tests may have to be applied when deciding whether land is an "agricultural holding" for the purposes of the Agricultural Holdings Act, 1948. To be such it must be "the aggregate of the agricultural land comprised in a contract of tenancy": s. 1 (1)—"contract of tenancy" being defined at the other end of the Act, in s. 94 (1). Whether the land is "agricultural land" has to be gone into by examining s. 1 (2): it means land used for agriculture which is so used for the purposes of a trade or business—and for the meaning of "agriculture" one again has to refer to s. 94 (1). Then, one may have to consider whether an agreement granting a licence is one which "shall take effect, with the necessary modifications, as if it were an agreement for the letting of land for a tenancy from year to year" (which makes the agreement a "contract of tenancy")—in which case s. 2 operates—unless the licence is granted in contemplation of the use of the land only for grazing or mowing during some specified period of the year.

The effects of these provisions came to be considered in *Rutherford* v. *Maurer* [1961] 3 W.L.R. 5; p. 404, *ante* (C.A.), a dispute between the executors of the owner of a five-acre field and the proprietress of a riding school which adjoined it. The owner and the proprietress of the school had exchanged documents stating: "£6 for six months—February 18th, 1959. Let to Mrs. Maurer for grazing for six months periods—must not be used for riding or any other purposes . . . No subletting without my permission." When on 28th December, 1959, the owner served the proprietress with a notice purporting to terminate her licence on 17th August, 1960, the latter laid claim to the security of tenure conferred by the Agricultural Holdings Act, 1948; and, the owner having died in January, 1960, her executors sued for a declaration that the grantee of the licence was not entitled to use the field, and for an injunction to restrain her from so doing. The defendant counterclaimed for a declaration to the effect that she held a tenancy of an agricultural holding.

### The purposes of a business

It will have been noticed that to be an agricultural holding the land must be used (i) for agriculture (which, by virtue of s. 94 (1), includes the use of land as grazing land) and (ii) for the purposes of a trade or business. The county court judge was complimented by Ormerod, L.J., for his succinct statement of the first problem which confronted him: "Undoubtedly the conduct of a riding school is a trade or business. The issue between the parties is whether the trade or business must be an agricultural trade or business." But Ormerod, L.J., and his colleagues did not agree with the county court judge's conclusion, which, largely influenced by a passage from Jenkins, L.J.'s judgment in *Howkins* v. *Jardine* [1951] 1 K.B. 614 (C.A.), but also reached independently of such guidance, was that the agreement was not a contract of tenancy of agricultural land.

### Natural construction

The Court of Appeal held that this construction was too narrow. In *Howkins* v. *Jardine* the question was the effect of the subletting of some farm cottages to subtenants not engaged in agriculture, and depended substantially on what was meant by the peculiar words "the aggregate of the agricultural land comprised in a contract of tenancy" with which the definition in s. 1 (1) begins. In the course of his judgment, Jenkins, L.J., did say: "The literal construction of the word 'used' in s. 1 (2) as requiring actual use of every inch of the holding for agriculture or for the purposes of an *agricultural trade or business* at any time would make the Act wholly unworkable." But as Willmer and Danckwerts, L.JJ., put it, Jenkins, L.J.'s mind had not been directed to the point now before the court.

### Anomaly?

It is of interest to note that while Ormerod, L.J., expressed some agreement with the view that the result was anomalous, but one to be dealt with by the Legislature and not by the court, Willmer, L.J., considered that to construe the words as applying only to an agricultural trade or business would give rise to difficulties in determining what was and what was not such a business. Danckwerts, L.J., did not say whether he would regard the remedy as worse than the disease, but made the comment that a perusal of the law reports since 1948 and a study of the terms of the (consolidating!) Act led one irresistibly to the conclusion that this Act would be as successful as its predecessors in producing litigation and mental exercise for lawyers.

### Period of the year

Among those reports are reports of *Reid* v. *Dawson* [1955] 1 Q.B. 214 (C.A.), and *Scene Estate, Ltd.* v. *Amos* [1957] 2 Q.B. 205 (C.A.), cases in which the proviso to s. 2 (2) excluding licences to occupy land in contemplation of use for grazing during some specified period of the year was held to prevent the licences before the court from taking effect as yearly tenancies. In the one, there was a hiring of the exclusive right for a term commencing on 1st November, 1950, and terminating on 30th October, 1951, and it was held that "specified period of the year" meant "specified part of the year"; and this was applied in the other, in which three months' agreements had been repeatedly renewed or extended over a total period of some seven years. But in *Rutherford* v. *Maurer* the use of the plural in what would have become the habendum of a yearly agreement was fatal to the plaintiffs' contention: "Let to Mrs. Maurer for grazing for six months periods." Ormerod, L.J.'s "We have to bear in mind that in construing a document . . . of this kind, we must pay regard to the actual words of the document in its application to the section" harmonises with views on the interpretation of s. 1 (2).

R. B.

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### CLEAN AIR

The air pollution panel of the Federation of British Industries appointed a working party in November, 1958, to make recommendations on the height of new chimneys with particular reference to s. 10 of the Clean Air Act, 1956. The working party's main recommendations are contained in a handbook, "Height and Design of New Chimneys," obtainable from F.B.I. Print and Publications, 21 Tothill Street, London, S.W.1, price 4s. post free.

# HERE AND THERE

## DEVALUED LAWYERS

So long as people were convinced that law and order provided the framework within which individual freedom could operate the prestige of the lawyers was high and so correspondingly were their rewards. Judges were not expected to queue for buses or wash up the dinner things. But now that people care so much less for liberty than for the services supposed to be rendered to them by social scientists, statisticians, assorted technologists and members of the managerial class, the world in general has far less use for the lawyer and rewards him accordingly. This is true even of traditionalist England, where there is now a marked tendency to fly from the devalued legal profession into the affluence of business or industry. It is yet more true of revolutionary Russia. Thus a Scottish Queen's Counsel in a recent travel book, while praising the conscientiousness and the technical efficiency of the Moscow lawyers, found the court buildings and appointments shabby and unimpressive and the clothes and general appearance of the lawyers suggestive of a condition of underprivilege. This state of affairs adds point to a recent complaint in a Russian newspaper of what is happening to law graduates expensively educated by the State. "Wearing a stylish suit and carrying a snow-white napkin over his arm, a graduate from the Moscow Institute of Laws manœuvres among the tables. What a joy it is to watch the juridical politeness with which this waiter bows before the customer and the magnificent accomplishment with which he notes orders and calculates bills." This is, no doubt, very good for the tourist trade, but it is a loss to the law to be deprived of such presence and precision. It is rather puzzling. No doubt all over the West End of London there are hordes of well-tipped waiters far more richly rewarded than the average barrister or struggling junior solicitor. But in officially tipless Russia what is the clue to the preference for the restaurant tables over the tables of the law? One reason would seem to be that newly trained specialists of all sorts are expected to be ready to be rocketed into the outer spaces of far-flung corners of the Soviet Union to "build communism" there, an unalluring prospect after five years of stimulating student life. Better stay in Moscow and be a waiter. He also serves—in a way.

## PARALLEL PROBLEMS

When he has recovered from the surprise and satisfaction of having his *bortsch* laid before him by a potential public prosecutor, the law-conscious tourist may be interested to discover that other problems of other peoples are paralleled in Russia, though always in the specialised Soviet style. For example, is France anxious about alcoholism? Do the Civic Guards in the Republic of Ireland engage much of their energies in protecting the people against the illicit production of poteen? The Soviet Union is so troubled by the social stigma of *samogon* (or as we would say, "moonshine") that the edge of the criminal law relating to it has recently been considerably sharpened. Purchasers of six different types of home-brewed vodka are to be liable to fines equivalent to £20. Dealers in the stuff and those who provide them with transport risk three years' imprisonment or a fine equivalent to £120. Since a good drinking head of more than average stability is a traditional essential in exchanges of Russian hospitality, prosecutions have hitherto tended to be rather rare and almost reluctant. It will be interesting to see with what increased vigour the authorities wield this new weapon of the criminal code.

## CRIME AND SOFT PUNISHMENT

But in the whole problem of prosecution and punishment we stumble against another strange similarity between Soviet problems and our own. Constantly made conscious of Soviet zeal for the suppression of political non-conformity, we are learning with some astonishment that in the field of simple non-heretical crime there is in Russia precisely the same division of public opinion as to the legitimate limits of leniency which we find in England. Newspapers there, like so many here, bitterly criticise "an acquiescent attitude towards hooliganism," going with the "strawberries and cream" treatment of "hooligans" in prison, where confinement has all the compensations of "cultural cells" providing the refining influences of books for reading and dominoes for relaxation. What they call "hooliganism" in Russia is roughly what we would regard as non-political ruffianism, behaviour there, as here, devoutly deplored by the serious-minded and defiantly delighted in by those who practise it. "Occupation: hooliganism" was an answer recently given by a teenage delinquent held up for questioning. And, what is worse, ordinary people in such cases often show signs of siding with the delinquent against the policeman. "What has he done?" they ask. "Let him go his own way." Even in cases of killing they ask: "Why should another life be taken because one has been lost?" Alarm at "bourgeois kindness" and "lop-sided humanism" towards the criminal are not the sort of controversial topics of which one expected to hear the echoes blown to us on the biting east wind. It is almost as if the buried world of Chekov with its endless discussions and philosophisings were breaking surface again after several generations underground. A piece of pure Chekov was recently unearthed by a newspaper investigator in a northern village, who discovered a leisurely well-dressed, middle-aged man with all the time in the world to discuss foreign politics and space flights. His official title was "Director of the Local Stadium," an institution which on inspection was revealed to be an unfenced field decorated with a set of goalposts, but actually dedicated to the grazing of a few cows. Questioned about the situation, the secretary of the local party committee explained that Mitia was a good fellow who did no one any harm and enjoyed holding an official position. "As for his salary, it is not that big; we won't be much poorer for it." Isn't that pure nineteenth century Russia?

Richard Roe.

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### Personal Notes

On his retirement as managing clerk at Messrs. White, Brooks and Gilman, solicitors, of Winchester, Mr. P. H. Ruffels was presented with a silver tray at his farewell party. He started work in 1894, with the firm which later amalgamated with Messrs. White, Brooks and Gilman.

On his retirement as chief clerk to Wakefield County Court and Wakefield Bankruptcy Court, Mr. Alan H. Thorpe was presented with a wristlet watch and a cigarette lighter by the registrar, Mr. S. B. Kirby, on behalf of members of the court staff, local solicitors and agents.

# REVIEWS

**Cordery's Law Relating to Solicitors.** Fifth Edition. By GRAHAM J. GRAHAM-GREEN, T.D., a Master of the Supreme Court. Assisted by DUNCAN S. GORDON, M.A., of Gray's Inn, Barrister-at-Law. pp. cxxix and (with Index) 657. 1961. London: Butterworth & Co. (Publishers), Ltd. £5 10s. net.

The last edition of "Cordery" having been published in 1935, the profession will welcome this new edition. Although developments within its field are less frequent and revolutionary than in some other branches of the law, there have been some significant changes during the last quarter of a century, in particular the enactment of the Solicitors Acts of 1936 and 1957 and the introduction of the Legal Aid and Advice Scheme. The effects of these are fully noted and an appendix sets out the 1957 Act in full, together with a useful table of comparison with earlier statutes, and extracts from other Acts along with the texts of various regulations. These include the Articled Clerks Regulations, 1957, not available in the Statutory Instruments series, which, however, will have to be materially amended upon the introduction of The Law Society's new educational requirements.

The work covers such subjects as qualification, employment and retainer, authority, liabilities and disabilities of solicitors. It also includes chapters on negligence, remuneration, legal aid and advice, interest on and recovery of costs, lien, associates and successors, and professional practice, conduct and discipline. By the use of smaller, but nevertheless clear, print the fifth edition would seem to contain more material in a less bulky form than its predecessor. Should its editors in the future wish to make further cuts, we would suggest that within a reasonable size "Cordery" cannot be expected to deal adequately with the subject of costs and that total omission of that topic is preferable to incomplete treatment.

In view of the fact that The Law Society constantly warns potential and actual articled clerks that only British subjects may be admitted, we searched "Cordery"—in vain—for the authority for this position. Independent inquiries have revealed that this disability flows from a construction of the prohibition in s. 3 of the Act of Settlement, 1700, against any foreigner enjoying "any office or place of trust either civil or military . . . from the Crown," the words quoted being deemed to include a solicitor as an officer of the Supreme Court.

**The Building Societies Acts, 1874-1960.** Fifth Edition. Edited by R. B. FULLER, Solicitor. pp. x and (with Index) 361. 1961. London: Franey & Co., Ltd. £3 15s. net.

As one could guess from the title, this book contains (in Pt. I) the full text both of all the Building Societies Acts, with repeals and amendments clearly indicated throughout, and of the Building Societies Rules and Regulations. In addition (in Pt. II), there are set out the more important extracts from associated legislation, rules and regulations. Another edition, although the fourth only appeared in December, 1959, was clearly rendered necessary by the 1960 Act. Having stated the above, there is nothing more usefully to be said, save perhaps that the presentation is clear and the index sufficient. Readers will know at once, without any guidance, whether or not they require this book, which really means that they will know whether or not they are concerned with building society administration.

**The New Law of Education.** Fifth Edition. By Miss M. M. WELLS, M.A., of Gray's Inn, Barrister-at-Law, and P. S. TAYLOR, Esq., M.A., Chief Education Officer, County Borough of Reading. pp. xxii and (with Index) 633. 1961. London: Butterworth & Co. (Publishers), Ltd. £2 7s. 6d. net.

Upon the publication of the fourth edition of this book we wrote that it "contains a mass of information and may be regarded as indispensable to education authorities and their legal advisers." Seven years later, this comment applies equally to the new edition.

The work is divided into four parts, the first being an introduction in which the present statutory system is reviewed in narrative form and takes into account the several changes and developments which have occurred since 1954. The remaining parts contain respectively the text of the relevant statutes; statutory rules and instruments; and circulars and memoranda. In general the law is brought up to date to 1st March, 1961, but the publishers have done well in including also the text of the Handicapped Pupils (Certificate) Regulations, 1961, which came into operation on 24th March, and references to *Re Baker* (*Infants*), p. 282, *ante* (at first instance), decided on 15th March.

**Evidence Explained and Advocacy Self-Taught.** A Handbook of Practical Instruction (for Legal Practitioners). By ROBERT BLACKFORD. pp. 65. 1961. London: The Crescent Press, Ltd. 6s. 6d. net.

If advocacy could be taught or evidence explained in sixty-five pages, Mr. Blackford might perhaps have succeeded in this book. But it is difficult to see who can gain very much from such a short study, particularly as several pages are occupied with forms which could be found in any book of precedents, and many other pages are filled with such obvious, if unimpeachable, exhortations as "Acquire fluency," "Assess the tribunal," "Go into court with a counsel's notebook" and—final insult—"Avoid being overtired." Is it really very helpful to tell a beginner that he should have a good memory, a sound knowledge of the law, fluency and perspicacity? If he has all these he scarcely needs this book, and, if he should lack any of them, reading about his deficiency will not help very much.

"Read the second section of the book, and I promise you will emerge with an understanding of Advocacy. If you will work through it and practise what you can of its suggestions you will have learnt the art of a worthwhile and fascinating subject." An author who prefaces his book with such remarks invites the most trenchant criticisms as well as incredulity: it is no wonder that he adds: "May success attend your efforts." Unfortunately, Mr. Blackford is not only over-confident: in places he is positively misleading, as where he states that it is most unusual for a tribunal to be hostile. "Take every point you can" is also dangerous advice unless qualified; the art of advocacy, like every other art, largely lies in selection, and a strong case is only weakened by reliance on weak points.

But to be fair, Mr. Blackford does set out succinctly the basic requirements of advocacy, and his summary of the rules of evidence could undoubtedly help the beginner in this difficult part of the law. Carried in the pocket of the raw solicitor, it would be useful as a rapid reference book when problems suddenly loom up and cannot wait to be solved in the library. But need so much of such a little book be printed in capitals?

**The Worlds of Chippy Patterson.** By ARTHUR H. LEWIS. pp. 311. 1961. London: Victor Gollancz, Ltd. £1 1s. net.

The worlds of the title are three: that of the ruling families of Philadelphia, into which Chippy Patterson was born in 1875; the underworld of the same city, with which he virtually identified himself as a criminal "trial lawyer" from 1903 until his death thirty years later; and that of the "inner man," which the author disarmingly leaves the reader to piece together from the other two.

Patterson abandoned his aristocratic world for the lowest levels of human society in a way that some artists and writers, but surely few practising lawyers, have done, apparently feeling a sense of kinship with the degraded and rejected which left him no choice. Yet he could hardly have made a more astute move professionally. The juries of the time and place stood in almost holy awe of a "Philadelphia gentleman," and when they found him sincerely identified with the prisoner he was defending they gave him their hearts and their verdicts as well. Speaking of the first trial in which Patterson took part (defending on a charge of murder), a juryman said to him years afterwards: "We all felt this way, Mr. Patterson. If a man like you believed this poor coloured man's story, what right had we to question it?" And of 401 persons charged with murder whom Patterson defended 171 were found not guilty, 222 went to prison for an average of little more than six years each, and only eight were executed.

The trials and the racy private life are told in graphic detail, but only the vaguest outlines of the "inner man" are discernible. We are dubious, respectful and entertained.

# NOTES OF CASES

*These notes are published by arrangement with the Council of Law Reporting. Except in respect of those marked °, full reports of the judgments, revised by the judges, will shortly appear in the Weekly Law Reports. A list of cases reported in to-day's issue of "W.L.R." is set out at the end of these notes.*

Case Editor: J. D. PENNINGTON, Esq., Barrister-at-Law

## Judicial Committee of the Privy Council

### WORKMEN'S COMPENSATION: SILICOSIS MANIFESTED AFTER TERMINATION OF EMPLOYMENT: RIGHT TO COMPENSATION

**Sunshine Porcelain Potteries Pty., Ltd. *v.* Nash**

Viscount Simonds, Lord Reid, Lord Radcliffe, Lord Tucker and Lord Hodson. 17th July, 1961

Appeal from the High Court of Australia.

Section 5 (1) of the Workers' Compensation Act, 1951, of Victoria, as amended, provides that: "If in any employment personal injury arising out of or in the course of the employment is caused to a worker his employer shall . . . be liable to pay compensation"; and s. 12 (1) that: "Where a medical practitioner certifies that a worker is suffering from a disease and is thereby disabled from earning full wages at the work at which he was employed . . . and the disease is due to the nature of any employment in which the worker was employed at any time prior to the date of disablement, then . . . the worker . . . shall be entitled to compensation . . ." Section 12 (1) of the Act of 1951, a consolidating Act which repealed the Workers' Compensation Acts of 1928 and 1946, was in the same terms as s. 18 of the Act of 1928 as substituted by s. 8 of the Act of 1946. The original s. 18 of the Act of 1928 was restricted to specified industrial diseases which did not include silicosis, whereas the new s. 18 substituted by the Act of 1946 admittedly covered silicosis: under the Act of 1928 the disease had to be due to the nature of the employment in which the worker was employed within twelve months previous to the date of disablement, whereas in the 1946 substitution the words were "at any time" prior to that date. The respondent, who had been employed as an insulator cleaner by the appellants from 1931 to 1938, was during her work exposed to dust containing silica, and she developed silicosis, the first manifest symptoms of which did not appear, however, until about 1950. In 1955 she obtained a medical certificate which stated that her disablement began about 1950. In 1956 she claimed compensation under the Act of 1951, as amended, and was awarded £2 2s. a week. The Supreme Court of Victoria set aside the award, but that decision was reversed on 2nd March, 1959, by a majority judgment of the High Court of Australia. The employer appealed.

LORD REID, giving the judgment, said that s. 12 of the Act of 1951 did not follow s. 5 in requiring that the injury must occur during the employment. The Act of 1946 applied to the respondent although she was not in employment after it was passed. The question was one of construction—the presumption against a statute being retrospective having little weight if, indeed, applicable at all—and the words of the new s. 18 substituted by the Act of 1946 applied exactly to the present case—the certificate and disablement were subsequent to its passing and the disease was due to the nature of the employment in which the respondent was employed "at any time prior to the date of disablement." There was nothing in the context or in the circumstances to require that any restricted meaning should be given to the section. It was no answer to the respondent's claim to show that the real cause of the injury was inhaling noxious material before the Act was passed. Appeal dismissed.

APPEARANCES: *Eustace Roskill*, Q.C., and *R. A. McCrindle* (*Nicholas Williams & Co.*); *Anthony Cripps*, Q.C., and *J. G. Le Quesne* (*Markby, Stewart & Wadesons*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law]

## House of Lords

### CRIMINAL APPEAL: HOUSE OF LORDS: WHETHER APPEAL LIMITED TO POINTS OF LAW SET OUT IN CERTIFICATE

**A.-G. for Northern Ireland *v.* Gallagher**

Lord Reid, Lord Goddard, Lord Tucker, Lord Denning and Lord Morris of Borth-y-Gest. 20th July, 1961

Appeal from the Court of Criminal Appeal in Northern Ireland.

The respondent was convicted before Lord MacDermott, C.J., and a jury at the Northern Ireland Winter Assizes of the murder of his wife on 7th September, 1960. There was no doubt that he killed her. The defence was insanity or alternatively that he was so drunk when he killed his wife as to be incapable of having any intent to kill her or do her grievous bodily harm. Accordingly, there was no room for a verdict of not guilty: if the defence had been successful the verdict would have been guilty but insane of manslaughter. The respondent appealed to the Court of Criminal Appeal of Northern Ireland on the ground of misdirection by the trial judge. That court held that there had been misdirection and that the verdict of murder could not stand. They further held that in the circumstances they could not substitute either a verdict of guilty but insane or a verdict of manslaughter and therefore directed a verdict of acquittal to be entered. The Attorney-General for Northern Ireland applied under the Administration of Justice Act, 1960, for a certificate that a point of law of general public importance was involved and for leave to appeal to the House of Lords. The court granted a certificate but refused leave on the ground that a ruling on the point of law stated in the certificate would not lead to a reversal of the decision. Leave to appeal was later given by the House of Lords. The point of law set out in the certificate was: "Whether a person in a psychopathic condition which is quiescent may become insane (within the meaning of the rule in *McNaghten's* case (1843), 10 Cl. & F. 200) as the result of the voluntary consumption by him of intoxicating liquor, if the effect of that intoxicating liquor is to bring about an explosive outburst in the course of a mental disease although the disease was not itself caused by intoxicating liquor." The defence of diminished responsibility is not available in Northern Ireland.

LORD REID said that s. 1 of the Administration of Justice Act, 1960, did not limit the House to the question certified and matters consequential on its decision of that question. On the question of misdirection, he agreed with the opinion of Lord Tucker and accordingly he moved their lordships that the appeal should be allowed and the verdict of murder restored.

LORD TUCKER said that once the court from which the appeal was brought had certified that a point of law of general public importance was involved in the decision, and leave to appeal had been given, either by that court or the House of Lords, the jurisdiction of the House to hear the appeal was established, and there was nothing in the Administration of Justice Act, 1960, in any way limiting its jurisdiction. It would always be a matter for the exercise of its discretion whether to allow a point in no way connected with the certified point of law to be argued on the appeal. In the present case the point certified of necessity required in order to dispose of the appeal a consideration of the direction of the trial judge to the jury on the law with regard to the defence of insanity, as applied to the evidence given at the

trial. His lordship examined the relevant evidence and said that in his opinion there was no misdirection and that, accordingly, he would allow the appeal and restore the verdict and sentence passed at the trial.

The other noble and learned lords delivered concurring opinions. Appeal allowed.

APPEARANCES: *W. Brian Maginess*, Q.C., A.-G. for Northern Ireland; *C. A. Nicholson*, Q.C., and *H. Bowman* (of the Bar of Northern Ireland) (*Linklaters & Paines*, for *Chief Crown Solicitor*, Ulster); *B. Kelly*, Q.C., and *R. Ferguson* (*J. Tickle & Co.*, for *David Gordon*, Belfast).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law]

## Court of Appeal

### LIBEL AND SLANDER: COMMUNICATION TO BAR COUNCIL: WHETHER ABSOLUTE PRIVILEGE

**Lincoln *v.* Daniels**

Sellers, Devlin and Danckwerts, L.JJ. 17th July, 1961

Appeal from Salmon, J., sitting with a jury ([1960] 1 W.L.R. 246; 104 SOL. J. 625).

The plaintiff, a Queen's Counsel, was awarded £7,500 damages for libel in respect of two communications sent by the defendant to the Secretary of the General Council of the Bar on 12th and 19th February, 1958, alleging professional misconduct by the plaintiff. On appeal the defendant's principal contention was that these communications were absolutely privileged.

SELLERS, L.J., said that the defendant's case was that he wished to bring to the notice of those responsible for the good conduct of the Bar the matters of complaint he had against the plaintiff's conduct. The plea of absolute privilege required an understanding of the provisions for dealing with complaints of misconduct by a member of the profession by the Bar Council and by the Inns of Court. The equivalent disciplinary power of the Inns of Court in relation to the practising members of the Bar was established over the centuries by practice and acceptance as if it had been derived from statute and as unassailable. If the Inns of Court had not controlled the professional conduct of the Bar, the judges would themselves have had to do so. The judges in the past had delegated. An inquiry before the Benchers of an Inn of Court was recognised by law and was a judicial process to which, in the public interest, absolute privilege attached to the full extent of proceedings. But these communications were not to the plaintiff's Inn of Court, and while it was not submitted that the Bar Council exercised quasi-judicial functions, it was contended that the complaints to the Secretary of the Bar Council (as he had been advised by the Secretary so to deliver them) came within the ambit of the absolute privilege attaching to the investigations before the plaintiff's Inn. A letter written to the Bar Council did not initiate proceedings, nothing at all might arise out of it and qualified privilege was sufficient at that stage to protect the writer and the defence of absolute privilege failed.

DEVLIN and DANCKWERTS, L.JJ., delivered concurring judgments. Appeal dismissed.

APPEARANCES: *Alan Campbell* (*L. Dawson*); *Neville Faulks*, Q.C., and *Joseph Dean* (*Kramer & Co.*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law]

### CUSTODY OF INFANTS: ADMISSION OF FRESH EVIDENCE ON APPEAL: RULES APPLICABLE

**O'Toole *v.* O'Toole**

Ormerod, Upjohn and Davies, L.JJ. 19th July, 1961

Appeal from Scarman, J.

The parties were married in 1951. There were two children of the marriage, both boys, who were born in 1953 and 1954 respectively. In November, 1956, in a defended suit for divorce, each party was granted a decree nisi on the ground of the other's cruelty, those decrees subsequently being made absolute. On 9th March, 1961, Scarman, J., made an order committing the custody of the children to their father. The mother appealed. On 24th April, 1961, an application by the mother to the Court of Appeal for leave to adduce fresh evidence at the hearing of her appeal was refused (p. 404, *ante*). At the hearing of the present appeal, that application was renewed, and was resisted on behalf of the father.

ORMEROD, L.J., said that the appeal would be dismissed; the boys had been with their father for the last two years, the welfare officer had reported that they were happy and well looked after, and it would be unfortunate if they had once again to be unsettled and to change their mode of life. The application for leave to adduce fresh evidence could not be acceded to. On 24th April, 1961, his lordship had expressed doubt whether the rule governing the admission of fresh evidence in the Court of Appeal, as stated in *Ladd* v. *Marshall* [1954] 1 W.L.R. 1489, should be applied at all in cases concerning the custody of infants. He was given to understand that the views he had expressed on that occasion were not the unanimous views of the other members of the court as it was at present constituted, but they were still the views held by his lordship.

UPJOHN, L.J., agreed that the appeal should be dismissed. His lordship was unable, however, as at present advised, to agree with what Ormerod, L.J., had said concerning the application of the rule governing the admission of fresh evidence to custody cases. The rule existed in relation to infancy matters as it did in relation to all other matters; it was a sound rule, the reason for it being to prevent multiplicity of litigation. His lordship did not see why it should not, generally speaking, be applied to infancy cases as to all other matters, though it should, in matters concerning the custody of infants, be applied with liberality and flexibility.

DAVIES, L.J., agreeing that the appeal should be dismissed, associated himself fully with the observations of Upjohn, L.J., on the point whether there was any fundamental difference between infancy matters and other matters in regard to the practice of the Court of Appeal in admitting fresh evidence. Application to admit further evidence refused. Appeal dismissed.

APPEARANCES: *Geoffrey Crispin*, Q.C., and *H. S. Law* (*Rowe & Maw*); *Geoffrey Lawrence*, Q.C., and *James Comyn*, Q.C. (*Clifford-Turner & Co.*).

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

### RATING: INDUSTRIAL HEREDITAMENT: PREMISES USED FOR MANUFACTURING AND RECONDITIONING SPARE PARTS AND FOR SERVICING VEHICLES

**East Yorkshire Motor Services, Ltd. *v.* Clayton (Valuation Officer)**

Sellers, Devlin and Danckwerts, L.JJ. 20th July, 1961

Appeal from the Lands Tribunal.

An omnibus company occupied premises which, until 1956, were scheduled as an industrial hereditament and placed in Pt. II of the Valuation List. The company used the premises as a central workshop for manufacturing and reconditioning parts or units of vehicles, which, after reconditioning or remaking, were used as replacements: an allotted part of the premises was used for the repair and reconditioning of a limited number of vehicles each week. In 1956 the local valuation court, assenting to a counter-proposal of the valuation officer, transferred the premises to Pt. I of the Valuation List. That order was affirmed by the Lands

Tribunal which held that, although some reconstruction did take place on the premises, it was entirely subsidiary to the main purposes of the hereditament which were those of repairing and reconditioning. The company appealed on the ground that the hereditament was an industrial hereditament within the meaning of s. 3 (1) of the Rating and Valuation (Apportionment) Act, 1928.

SELLERS, L.J., delivering a reserved judgment, said that the Lands Tribunal had inquired only whether the nature of the work undertaken on the premises was reconstruction or repair and reconditioning: *Potteries Electric Traction Co.* v. *Bailey*, decided at the same time as *Moon* v. *London County Council* [1931] A.C. 151, did not support such an approach. These premises were undoubtedly a factory except for the part given over to the repair of the vehicles themselves. The tribunal had failed to recognise the established distinction between reconditioning vehicles and reconditioning units. The product of the factory area was a number of spare parts and the processes of producing spare parts, new or second-hand, were clearly industrial processes. The *Potteries* case recognised that one looked at the hereditament as a whole, including any non-industrial user. He would hold that the hereditament as a whole was an industrial hereditament, but that there were obviously places in it which had a non-industrial use which called for exclusion from derating benefit. The case would be remitted to the tribunal to make an apportionment accordingly.

DEVLIN, L.J., agreed.

DANCKWERTS, L.J., delivered a concurring judgment. Appeal allowed. Leave to appeal to the House of Lords.

APPEARANCES: *Patrick Browne*, Q.C., and *David Widdicombe* (*Sidney Morse & Co.*); *Derek Walker-Smith*, Q.C., and *J. Raymond Phillips* (*Solicitor, Inland Revenue*).

[Reported by Mrs. E. M. WELLWOOD, Barrister-at-Law]

## DIVORCE: ANSWER FILED BEFORE LEGAL AID GRANTED: AMENDMENT

***Keisner *v.* Keisner**

Ormerod, Upjohn and Davies, L.JJ. 20th July, 1961

Appeal from Karminski, J.

A husband petitioned for divorce on the ground of desertion and the wife, who had been refused legal aid, filed a formal answer pending her appeal to the area committee. The area committee allowed the appeal and the wife then sought leave to amend her answer to allege cruelty against the husband. Leave to amend the answer was refused by Karminski, J., and from this refusal the wife appealed.

DAVIES, L.J., said that he could not see that it was incumbent on solicitors in circumstances such as these to consult counsel and file what might be a long and complicated answer at their own expense before a legal aid certificate had been granted. In so far as the judge had exercised his discretion to refuse leave to amend on that ground his lordship thought that he was wrong, and that the wife's appeal should be allowed to enable her to amend the answer.

ORMEROD and UPJOHN, L.JJ., agreed. Appeal allowed.

APPEARANCES: *Geoffrey Crispin*, Q.C. (*Culross & Co.*); *Roger Ormrod*, Q.C., and *J. C. Leonard* (*Herbert Baron & Co.*).

[Reported by Miss MARGARET BOOTH, Barrister-at-Law]

## DIVORCE: CUSTODY: AGREEMENT BETWEEN PARTIES TO APPLY FOR CUSTODY TO BE REFERRED TO CHAMBERS

**Cooper *v.* Cooper and Harmer**

Ormerod, Upjohn and Davies, L.JJ. 21st July, 1961

Appeal from Lord Merriman, P.

In April, 1960, the husband petitioned for divorce, the petition including a prayer for the custody of the child of the family, a girl born in 1957. The child was in the care and control of the wife, and the husband proposed that the existing arrangements should continue. The wife stated in her memorandum of appearance that she did not intend to defend the case at the hearing, but that she wished to be heard on the husband's claim for custody of the child and to make an application for custody on her own account. She was granted legal aid for that purpose. Before the hearing of the suit, the solicitors acting for the husband and the wife respectively agreed, in letters passing between them, that at the hearing counsel for the husband should ask the court to refer the matter of custody to chambers. The wife was not represented at the hearing of the suit, which took place before Lord Merriman, P., on 30th May, 1961. Counsel for the husband put before the court the letters passing between the solicitors and asked that the matter of custody be referred to chambers. Lord Merriman, P., refused that request, and granted custody to the husband, stating that arrangements about referring the matter to chambers did not bind the judge. The wife appealed against the custody order.

ORMEROD, L.J., said that the basis of the wife's appeal was that she did not have the opportunity of being heard by the court. No order or direction had been produced, however, to indicate that there was a practice that an issue of custody might, by agreement between the parties, be referred to chambers. An issue on custody was a matter entirely within the jurisdiction of the judge hearing the suit, and an agreement between the parties that it should be dealt with in some other way was an attempt to deprive the judge of a jurisdiction vested in him. The appeal should be dismissed.

UPJOHN and DAVIES, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *Joseph Jackson* (*Rex B. Cowan & Co.*); *Alan Trapnell* (*Sandford, Mervyn Taylor & Co.*).

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

## PERSONAL INJURIES: DERMATITIS CONTRACTED AT WORK: WHETHER EMPLOYER UNDER A DUTY TO DISMISS

**Withers *v.* Perry Chain Co., Ltd.**

Sellers, Devlin and Danckwerts, L.JJ. 21st July, 1961

Appeal from Stevenson, J., at Glamorgan Assizes.

From 1951 to 1956 the plaintiff was employed by the defendants, who manufactured component parts of bicycles, on assembling bicycle hubs, work which involved the use of grease. In April, 1956, the plaintiff, whose skin was susceptible to some of the ingredients in the grease, contracted dermatitis on both hands. On 14th May, she was transferred to other work, assembling driving sleeves, which involved handling parts which had come through a bath of lubricating suds (which contained some oil) and had passed through a drying chamber before reaching the plaintiff. On three further occasions during 1956 the plaintiff again developed skin trouble. Each time she returned to work after an absence of some weeks she accepted the same work on the assembly of driving sleeves and continued to do it until January, 1957, when it became possible for the defendants to transfer her to the only other suitable work available for her. In 1959 she again contracted dermatitis. She claimed that she had contracted dermatitis as a result of the defendants' negligence or breach of duty in that knowing that she had suffered from dermatitis, they had employed her from 14th May, 1956, to 14th January, 1957, on work involving contact with lubricating suds, which they knew or ought to have known were irritant and likely to exacerbate or cause dermatitis. Stevenson, J., gave judgment for the plaintiff, awarding her £480 damages. The defendants appealed.

SELLERS, L.J., said that no breach of duty in relation to the first attack of dermatitis could have been established.

When the plaintiff returned to work in May, 1956, she was anxious to get other work and the defendants gave her the best work available. If she had not taken it she could not have worked at all. He could not believe that the common law required employers to refuse to employ a person who was willing to work for them simply because they thought it was not in that person's best interests to do that work. That would be imposing a restriction on the freedom of the individual wholly foreign to the common law. There was no duty at common law requiring an employer to dismiss a person rather than to retain him and allow him to obtain his wages. The duty on the employer here was to take all reasonable care having regard to the fact that the plaintiff had had dermatitis. Applying that standard, the evidence did not establish any breach of duty. He would allow the appeal.

DEVLIN, L.J., said there was no legal duty on an employer to prevent an adult employee from doing work he or she was willing to do. If there was a slight risk it was for the employee to weigh it against the desirability or necessity of employment. The duty implicit in the judge's finding did not exist and should be set aside.

DANCKWERTS, L.J., agreed. Appeal allowed.

APPEARANCES: *David Croom-Johnson*, Q.C., and *Philip Owen* (*Clifford Turner*); *H. E. Hooson*, Q.C., and *B. Griffiths* (*Evill & Coleman*).

[Reported by Mrs. E. M. WELLWOOD, Barrister-at-Law]

## Chancery Division

### SETTLED LAND: FUTURE LEASE OF FUSED SETTLED AND NON-SETTLED LAND: WHETHER WITHIN POWER OF TENANT FOR LIFE

***In re* Rycroft's Settlements; Rycroft *v.* Rycroft and Others**

Wilberforce, J. 12th July, 1961

Adjourned summons.

A tenant for life with the statutory leasing powers entered into an agreement conditional on the court's approval for the grant of leases of certain properties, nine of which were subject to the settlement and to two of which he was absolutely entitled. The properties were to be developed by the tenant company, the work to be completed not later than 31st December, 1973. The leases were to be for a term of ninety-nine years, commencing not later than 25th December, 1972. There were three leases, the first comprising the tenant for life's own property and one of the settled properties, and the second and third, four settled properties each. The aggregate rent of £17,500 a year, which exceeded one-fifth of the net annual value of the land, was to be apportioned among the three properties in a ratio to be agreed between the parties. The tenant for life sought the court's approval of the agreement.

WILBERFORCE, J., said that the tenant for life had no power to grant a lease in which there was a fusion of settled and non-settled land. On the question whether the tenant for life could enter into the agreement since the leases might not take effect in possession within twelve months of their date as required by s. 42 (1) of the Settled Land Act, 1925, s. 90 (*f*) (iii) of that Act should not be read as limiting the lease to one which at the time of the agreement conformed with the Act; the lease only had to conform at the date when it came to be granted. The agreement, therefore, could be approved on that ground. However, on the construction of the agreement, the land was contracted to be leased in lots within the meaning of s. 44 (1) and since the rent reserved by a lease of one of the properties would, however the apportionment was made, exceed one-fifth of the net annual value of the land within s. 44 (3) the agreement failed on that ground. He would, therefore, declare that the tenant for life had not statutory power to enter into the agreement. Declaration accordingly.

APPEARANCES: *A. J. Balcombe, N. C. H. Browne-Wilkinson, C. J. Slade, G. M. Godfrey* (*Baileys, Shaw & Gillett*).

[Reported by Miss M. G. THOMAS, Barrister-at-Law]

### PROCEEDINGS UNDER MARRIED WOMEN'S PROPERTY ACT, 1882: REFERENCE TO OFFICIAL REFEREE

***In re* Edward's Questions**

His Honour Percy Lamb, Q.C. 21st July, 1961

Adjourned summons.

A husband issued a summons against his wife under s. 17 of the Married Women's Property Act, 1882. The wife issued a cross-summons against her husband. On 15th December, 1960, it was ordered that the questions raised be referred to and determined before an official referee.

HIS HONOUR PERCY LAMB, Q.C., said that *In re Humphrey* [1917] 2 K.B. 72, appeared in the current text and practice books as authority for saying that cases under s. 17 could not be referred to an official referee. That case was no longer of any substance and effect because of s. 15 of the Administration of Justice Act, 1956, and R.S.C. Ord. 36A, r. 1; and the notes in the text and practice books were erroneous.

APPEARANCES: *H. E. Francis*, Q.C., and *F. Bower Alcock* (*Haslewoods* for *Bosley & Co.*, Brighton); *Michael Albery*, Q.C., and *S. Seuffert* (*Wilberforce Jackson & Co.*, Croydon).

[Reported by Miss V. A. MOXON, Barrister-at-Law]

## Probate, Divorce and Admiralty Division

### HUSBAND AND WIFE: CONSTRUCTIVE DESERTION: INCEST

***W v. W* (*No. 2*)**

Lord Merriman, P. and Baker, J. 13th April, 1961

Appeal from justices.

A husband was convicted of incest with one daughter and, an offence with a second daughter being taken into consideration, was sentenced to a term of imprisonment. On his release from prison he tried to effect a reconciliation with the wife, during the course of which acts of sexual intercourse took place. Thereafter the wife wrote to him telling him not to come to the matrimonial home any more as she had just learnt what he had done to the second daughter. The justices made a separation and maintenance order in the wife's favour on the ground of constructive desertion. The husband appealed.

LORD MERRIMAN, P., said that the justices were entitled to find that the criminal behaviour of the husband in the matrimonial home gave the wife reasonable cause to exclude him from it. There was no element of persistence by the husband in that course of conduct, but Lord Goddard, C.J., in *Ivens* v. *Ivens* [1955] P. 129, at p. 132 (C.A.), had quite plainly stated that there could be no worse conduct towards a wife than that a husband should behave in this way, and in stating that proposition there was no insistence by him on any element of persistence. There could be no doubt as to the effect on a decent woman of learning that her husband had been committing incestuous adultery with their daughter, and in his lordship's opinion the justices were right in finding that the wife had reasonable cause to exclude the husband from her home, and for continuing to do so, and that the husband was therefore in constructive desertion.

BAKER, J., delivered a concurring judgment. Appeal dismissed.

APPEARANCES: *A. T. Hoolahan* (*Willis & Willis*, for *Treasure*, Gloucester); *L. I. Stranger-Jones* (*Iliffe, Sweet & Co.*, for *W. C. Davey, Son & Jones*, Cirencester).

[Reported by Miss MARGARET BOOTH, Barrister-at-Law] [1 W.L.R. 473

## DIVORCE: DESERTION: SUPERVENING INSANITY OF DESERTING SPOUSE

### *Osborne *v.* Osborne (by her Guardian)

Lord Merriman, P. 17th July, 1961

Defended suit for divorce.

The parties were married in 1921. The evidence was that the wife deserted the husband in 1945. By a petition dated 2nd May, 1959, the husband prayed for divorce on the ground of the wife's desertion for upwards of three years immediately preceding the date of presentation of the petition. The wife, by the Official Solicitor as her guardian *ad litem*, filed an answer denying that she had been capable of forming the intention to desert the husband, or to resume cohabitation with him, since 10th October, 1958, when she was admitted to hospital as a person of unsound mind. The medical evidence was that since October, 1958, she had been incapable, by reason of mental illness, of forming or retaining a rational intention as to living with, or not living with, her husband.

LORD MERRIMAN, P., said that this was one of the first cases in which s. 2 of the Divorce (Insanity and Desertion) Act, 1958, had been invoked. That section was designed to get rid of the line of cases holding that where a deserting spouse became insane, the desertion was terminated from the time when the insanity supervened. The question now was whether, on the evidence, the court could infer that the intention to desert would have continued even though the mental incapacity had not supervened. In the circumstances, the proper inference for the court to draw was that the wife's desertion would have continued, had she not been mentally incapable of continuing the intention to desert. The husband had therefore established his case and was entitled to a decree nisi. There would be embodied in the order, by the husband's consent, a provision for the payment by him of 5s. a week, until further order, in respect of extra comforts for the wife. That payment was entirely voluntary, however, since the arrangement usual in cases where divorce was on the ground of insanity did not necessarily apply to cases where, although the respondent was of unsound mind, the ground of divorce was desertion. Decree and order accordingly.

APPEARANCES: *Quentin Edwards* (*Windsor & Co.*, Edmonton, N.18); *Kenneth Willcock* (*Official Solicitor*).

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

## MANDAMUS: MAGISTRATE: ORDER TO STATE CASE

### *R. *v.* Frampton; *ex parte* Feldmann

Lord Merriman, P., and Cairns, J. 19th July, 1961

Application for mandamus.

A husband applied for an order of mandamus directed to a metropolitan magistrate requiring him to state a case for the opinion of the High Court upon an order made by him committing the husband to prison for twenty-eight days, the order being suspended on payment by the husband of £4 5s. per week in respect of a maintenance order in favour of the wife. Counsel for the magistrate said that, on the facts, it was open to the husband to submit that there was a question of law worthy of the consideration of the High Court. The question was whether there had been evidence before the magistrate upon which he could be satisfied that the husband, while having the means to pay the sums ordered, had neglected or refused to do so. The fact that the magistrate might reasonably have formed the view that the conduct of the husband was frivolous and vexatious could not affect that question of law. Accordingly, the application was not opposed by the magistrate.

LORD MERRIMAN, P., said that the magistrate would be ordered to state a case embodying the evidence on which his order had been made. Application granted.

APPEARANCES: The applicant in person; *J. R. Cumming-Bruce* (*Treasury Solicitor*).

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

## DIVORCE: "CHILD OF THE FAMILY": ARRANGEMENTS FOR CARE AND UPBRINGING

### *Roper *v.* Roper

Mr. Commissioner Latey, Q.C. 20th July, 1961

Undefended suit for divorce.

The parties were married in 1945. In 1954, the wife left the husband. In 1957, the wife committed adultery, as a result of which, on 30th March, 1958, she gave birth to a child. In July, 1960, she presented a petition for divorce on the ground of cruelty, praying for the exercise of the court's discretion in respect of her adultery. The petition recited that there were no living children of the family, and made no reference to the child born to the wife.

Mr. COMMISSIONER LATEY, Q.C., said that although it was not suggested that the child was the husband's child, or that the husband had ever accepted the child as one of the family, the name and date of birth of the child should be stated in the petition, as though the child were a child of the family. Moreover, the court had to be satisfied that the arrangements made for the care and upbringing of the child were satisfactory, or were the best which could be devised in the circumstances, or that it was impracticable for any such arrangements to be made, before any decree nisi could be made absolute. Having heard the evidence, and having pronounced a decree nisi, in the exercise of the court's discretion in the wife's favour, his lordship certified that the arrangements she proposed for the child's care and upbringing were satisfactory, and ordered the husband to pay the costs of the suit. Order accordingly.

APPEARANCES: *Trevor Guest* (*Denis Hayes*).

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

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## THE WEEKLY LAW REPORTS

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## BUILDING SOCIETIES

The Building Society (Amendment) Rules, 1961 (S.I. 1961 No. 1237), in operation on 11th August, amend Pt. 2 of the Schedule to the Building Society Rules, 1959, so as to prescribe the particulars relating to certain kinds of additional security not otherwise mentioned in that Part which must be set out in the notice given by a building society to a prospective borrower under s. 7 of the Building Societies Act, 1939, where such additional security is to be taken by the society.

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(*Continued on p. xvii*)

# IN WESTMINSTER AND WHITEHALL

## ROYAL ASSENT

The following Bills received the Royal Assent on 19th July:—

Argyll County Council (Arinagour and Craignure Piers, etc.) Order Confirmation.
**Barristers (Qualification for Office).**
Birmingham Corporation.
British Transport Commission Order Confirmation.
City of London (Various Powers).
**Consumer Protection.**
**Court of Chancery of Lancaster (Amendment).**
**Criminal Justice.**
Dartford Tunnel.
**Finance.**
**Flood Prevention (Scotland).**
Forth Road Bridge Order Confirmation.
London County Council (Money).
Manchester Corporation.
Montrose Burgh and Harbour (Amendment) Order Confirmation.
National Trust for Scotland Order Confirmation.
**Public Authorities (Allowances).**
River Wear Watch (Dissolution).
Saint Benet Sherehog Churchyard.
Saint Pancras, Pancras Lane, Churchyard.
**Sheriffs' Pensions (Scotland).**
**Small Estates (Representation).**
Stationers' and Newspaper Makers' Company.
Sutton Coldfield Corporation.

## HOUSE OF LORDS

### A. Progress of Bills

Read First Time:—

British Transport Commission (No. 2) Order Confirmation Bill [H.C.] [19th July.

Read Second Time:—

**Credit-Sale Agreements (Scotland) Bill [H.C.]** [20th July.
**Crofters (Scotland) Bill [H.C.]** [20th July.
Newport Corporation Bill [H.C.] [17th July.
**Trusts (Scotland) Bill [H.C.]** [18th July.

Read Third Time:—

**Companies (Floating Charges) (Scotland) Bill [H.C.]** [20th July.
**Covent Garden Market Bill [H.C.]** [17th July.
Eyemouth Harbour Order Confirmation Bill [H.C.] [20th July.
**Highways (Miscellaneous Provisions) Bill [H.C.]** [19th July.
Middlesex County Council Bill [H.C.] [18th July.
**Mock Auctions Bill [H.C.]** [20th July.
Pier and Harbour Provisional Order (Exmouth) Bill [H.C.] [20th July.
**Rivers (Prevention of Pollution) Bill [H.C.]** [19th July.
Teesside Railless Traction Board (Additional Route) Provisional Order Bill [H.C.] [20th July.

In Committee:—

**Army and Air Force Bill [H.C.]** [18th July.
**Crown Estate Bill [H.C.]** [20th July.
**Human Tissue Bill [H.C.]** [18th July.
**Licensing Bill [H.C.]** [18th July.
**North Atlantic Shipping Bill [H.C.]** [18th July.
Pier and Harbour Provisional Order (Exmouth) Bill [H.C.] [19th July.

### B. Questions

#### Legal Education

In reply to Lord Ogmore, who asked whether the Government would take steps to establish a common system of legal education that would facilitate interchange between barristers and solicitors, the Lord Chancellor said that the Government had no responsibility for legal education in England but considerable work has been done by the Bar Council, The Law Society and the Council of Legal Education on the subject of a common system of legal education and he hoped that that work would soon come to fruition. He was sure that the matter was better left to the two branches of the legal profession to deal with. [18th July.

## HOUSE OF COMMONS

### A. Progress of Bills

Read First Time:—

**Burial of Offenders Bill [H.C.]** [18th July.

To amend section six of the Capital Punishment Amendment Act, 1868.

**Public Lavatories (Abolition of Turnstiles) Bill [H.C.]** [19th July.

To prohibit the restriction by any local authority of access to a public lavatory or sanitary convenience by means of a turnstile; and to provide for the removal of such turnstiles.

**Weights and Measures (No. 2) Bill [H.C.]** [17th July.

To make amended provision with respect to weights and measures, and for connected purposes.

Read Second Time:—

Devon County Council Bill [H.L.] [18th July.
**Suicide Bill [H.L.]** [19th July.

### B. Questions

#### Road Traffic Bill

Mr. Marples said that there was clearly not enough time in this session of Parliament for the Road Traffic Bill to go through all its stages in the Commons. It was the Government's intention to re-introduce the Bill next session. [19th July.

## STATUTORY INSTRUMENTS

**Breathing Apparatus,** Etc. (Report on Examination) Order, 1961 (S.I. 1961 No. 1345.) 5d.
*Draft* **Grey Seals Protection** (Scotland) (Suspension of Close Season) Order, 1961.
**Hydrocarbon Oil Duties** (Drawback) (No. 4) Order, 1961. (S.I. 1961 No. 1300.) 5d.
**London Traffic** (Prescribed Routes) (Hendon) Regulations, 1961. (S.I. 1961 No. 1287.) 4d.
London Traffic (Prescribed Routes) (City of London) (Revocation) Regulations, 1961. (S.I. 1961 No. 1286.) 4d.
London Traffic (Weight Restriction) (Great Parndon) Regulations, 1961. (S.I. 1961 No. 1317.) 5d.
**Motor Vehicles** (Construction and Use) (Amendment) Regulations. (S.I. 1961 No. 1313.) 5d.
**Parking Places** (Extension outside London No. 3) Order, 1961. (S.I. 1961 No. 1324.) 4d.
**Perth Corporation** Water Order, 1961. (S.I. 1961 No. 1312. (S. 83).) 5d.
**Stopping up of Highways Orders, 1961:—**
County Boroughs of Birkenhead and Wallasey (No. 1). (S.I. 1961 No. 1314.) 5d.
City and County Borough of Birmingham (No. 5). (S.I. 1961 No. 1315.) 5d.
City and County Borough of Birmingham (No. 6). (S.I. 1961 No. 1304.) 5d.
County of Buckingham (No. 7). (S.I. 1961 No. 1296.) 5d.
County of Cambridge (No. 1). (S.I. 1961 No. 1297.) 5d.
County of Chester (No. 13). (S.I. 1961 No. 1325.) 5d.
City and County Borough of Coventry (No. 1). (S.I. 1961 No. 1305.) 5d.
County of Durham (No. 8). (S.I. 1961 No. 1306.) 5d.
County of Huntingdon (No. 4). (S.I. 1961 No. 1298.) 5d.
County of Lancaster (No. 23). (S.I. 1961 No. 1291.) 5d.
London (No. 28). (S.I. 1961 No. 1301.) 5d.
London (No. 29). (S.I. 1961 No. 1316.) 5d.
County of Middlesex (No. 5). (S.I. 1961 No. 1302.) 5d.

**Stopping up of Highways Orders, 1961** (*continued*)

County of Sussex, West (No. 3). (S.I. 1961 No. 1303.) 5d.
County of Wilts (No. 6). (S.I. 1961 No. 1326.) 5d.
County of Worcester (No. 6). (S.I. 1961 No. 1327.) 5d.

**Street Playgrounds Orders** (Procedure) (Scotland) Regulations, 1961. (S.I. 1961 No. 1322 (S. 84).) 6d.

**Wages Regulation** (Boot and Shoe Repairing) Order, 1961. (S.I. 1961 No. 1309.) 2s. 1d.

Wages Regulation (Cutlery) Order, 1961. (S.I. 1961 No. 1310.) 11d.

**Wakefield and District** Water Board Order, 1961. (S.I. 1961 No. 1299.) 1s. 5d.

## SELECTED APPOINTED DAYS

**July**

14th — Agriculture (Stationary Machinery) Regulations, 1959 (S.I. 1959 No. 1216) fully operative.

15th — Reciprocal Enforcement of Foreign Judgments (Germany) Order, 1961. (S.I. 1961 No. 1199.)

**July** (*continued*)

17th — General Optical Council Disciplinary Committee (Legal Assessor) Rules, 1961. (S.I. 1961 No. 1239.)

21st — Wages Regulation (Sugar Confectionery and Food Preserving) (Amendment) Order, 1961. (S.I. 1961 No. 1272.)

22nd — Industrial and Provident Societies Act, 1961.

28th — Wages Regulation (Cutlery) Order, 1961. (S.I. 1961 No. 1310.)

31st — Civil Aviation (Licensing) Act, 1960, s. 9 (part).
Wages Regulation (Boot and Shoe Repairing) Order, 1961. (S.I. 1961 No. 1309.)

**August**

1st — Betting and Gaming Act, 1960, ss. 13, 14.
Breathing Apparatus, Etc. (Report on Examination) Order, 1961. (S.I. 1961 No. 1345.)
Land Compensation Act, 1961.
Motor Vehicles (Construction and Use) (Amendment) Regulations, 1961. (S.I. 1961 No. 1313.)

# CORRESPONDENCE

*[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]*

### Common Market Legal Problems

Sir,—I was very interested in the letter published in your issue of 21st July (p. 627) under the above heading. The practical problem so far as most solicitors are concerned is not that of setting up a branch office abroad which, as pointed out in that letter, is likely to be far more expensive than it is worth. What is required, however, is a list of correspondents or agents in the various countries within the Common Market and it would obviously be helpful to know whether or not any particular correspondent is a qualified solicitor since it is then possible to talk a common language and obtain the advice, translated into English legal terms, of somebody who is familiar with the mode of thought of English lawyers.

Is any such list available or can it be compiled ?

R. E. CHRISTOPHERS.

Hampton-in-Arden.

[Our correspondent is referred to the International Section of "The Law List," 1961, p. 2307 et seq., and to Kime's International Law Directory, 1961, p. 170 et seq.—ED.]

# POINTS IN PRACTICE

*Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all*

### Estate Duty—SURRENDER OF LIFE INTEREST

*Q.* *T* makes her will leaving her estate to her husband *H* for life and then to *N* absolutely. Estate duty on *T's* death is paid. *H* now wishes to surrender his life interest, within three months after *T's* death, so that *N's* remainder may be accelerated. No benefit will be reserved to *H*. If *H* surrenders his life interest and dies within five years thereafter is estate duty payable in respect of his death on any part of the value of the life interest or does the surviving spouse exemption apply so that no duty is payable ? If duty is payable is it reduced by quick succession relief in the event of *H's* death within five years after that of *T* ?

*A.* No estate duty will be payable. There will have been a gift of the life interest but, *ex hypothesi*, that will be valueless on the death of the life-tenant. There will have been a surrender of the life interest but the Finance Act, 1950, s. 43 and Sched. VII, operates only to preserve claims for duty which would have existed had the life interest not been surrendered. In this case there would have been no such claim.

### Release of Debt

*Q.* In 1953 we acted for a shopkeeper who sold his business to his son for £2,400. The goodwill was properly valued then at £1,800 and the stock at £600, and the transaction was completed by a deed of assignment which was stamped for £24 stamp duty. The assignment provided that the purchase price would be paid by instalments of £2 per week, but that in the event of the son selling the business or making default in his payments the whole outstanding balance would become immediately payable to the father. The son kept up his weekly payments regularly until he died about two months ago. He died intestate and letters of administration have been granted to his widow. The whole estate of the deceased is under £5,000 and the widow is entitled to this estate. The chief asset of the estate is the business and the widow is proposing to sell the same for £2,000. However, there is still about £1,600 owing to the father of the deceased in respect of the balance of the purchase money under the assignment of 1953. He states that if the business is sold by his daughter-in-law as indicated he will accept a sum of £1,000 in settlement of the money due to him. Can you advise how best to carry out this settlement ? Can you recommend a suitable precedent ; if not, what recitals should be inserted in the document evidencing the settlement, and what will be the stamp duty ? Can we endorse the settlement on the assignment ?

*A.* First, we suggest that a suitable precedent of a release of the debt in question can be extracted from the fuller precedent, Form XIX on p. 569 of Key & Elphinstone's Precedents in Conveyancing, 15th ed., vol. 2—especially from cl. 1 thereof. See also, in particular for recitals, form 4 on p. 570 of vol. 13 of the Encyclopaedia of Forms and Precedents, 3rd ed. Second, we consider that the release will be adequately stamped with the fixed duty of 10s. under the Stamp Act, 1891, s. 1 and Sched., heading Release. Third, it is purely a matter of convenience whether or not the release is endorsed on the assignment. Certainly both documents should be retained by the widow.

### Stamp Duty—AVOIDANCE—CONTRACT WITHOUT CONVEYANCE

*Q.* A client is the owner of two freehold shop premises, the value of each of which amounts to about £6,000, and both the

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(*Continued on p. xviii*)

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(*Continued on p. xix*)

properties are in the name of the client and were purchased over ten years ago. The client has now formed a private limited investment company and wishes the two freehold properties to be brought within the company. However, actually to convey the freehold properties to the company would cost £240 or more in stamp duty, apart from legal charges, and the client is most anxious to avoid such appreciable expense if what he wishes to do could otherwise legally be effected. The client accordingly proposes to enter into binding contracts for sale of the properties to the company, but not to go any further and not to complete conveyances of the properties to the company. If, and as and when, the company later sells the properties the client receives the contract price and will convey the properties as directed by the company. Is there any objection to the course proposed?

*A.* Your proposition is a perfectly good one and is comparatively common in practice. The contract, if it is in the usual form, i.e., apparently contemplating a conveyance in due course, is not liable to ad valorem duty: *Inland Revenue Commissioners* v. *Angus* (1889), 23 Q.B.D. 579. However, references to holding on trust must not be included: *Chesterfield Brewery* v. *Inland Revenue Commissioners* [1889] 2 Q.B. 7. On payment of the purchase price the entire beneficial interest would pass to the company, which can protect its interest by registration of an estate contract under the Land Charges Act, 1925 (or, if registered land, by notice under s. 49 (1) (*c*) of the Land Registration Act, 1925). Then clearly stamp duty will only be attracted by the conveyance direct to any future sub-purchasers: s. 59 of the Stamp Act, 1891. If the company goes into possession and does not resell, in due course it will obtain a title under the Limitation Act, 1939: *Bridges* v. *Mees* [1957] 3 W.L.R. 215. There is, of course, no fear on the facts of the question of the parties not co-operating.

**Executor**—Beneficiary Dying Domiciled Abroad

*Q.* The trustees of an English estate hold money which is payable to the executor of a deceased beneficiary who died domiciled in the U.S.A. The sole executor is an American company which obtained probate of the beneficiary's will in the American court. Can the executor, acting under the foreign grant, give the English trustees a valid receipt for the money or is it necessary, in order for the receipt to be a complete safeguard to the trustees, for probate of the beneficiary's will to be granted in the English court to the American executor, which, presumably, would appoint an attorney to apply for the grant on its behalf? It appears from the judgment in *In the Estate of Yahuda* [1956] P. 388, that it is "the established practice" of the English court to admit to probate a duly authenticated copy of the will proved in the country of the deceased's domicile. Is it legally necessary to do this in order to ensure that the receipt of the executor under the foreign grant is a valid receipt to the English trustees?

*A.* The general rule is that if the deceased left property in England a grant of representation must be obtained to deal with it. The present case does not appear to be within one of the exceptions, so that if the English trustees make payment to the American executor they will become liable as executors *de son tort*: *New York Breweries* v. *A.-G.* [1899] A.C. 62. Accordingly the only safe course is to insist on the American executor obtaining a grant, which may be an attorney grant under r. 30 of the Non-Contentious Probate Rules, 1954, and *In the Estate of Yahuda* [1956] P. 388, may be applied.

**Title by Surviving Administrator**

*Q.* By his will of April, 1925, *A* appointed *B* and *C* to be his trustees, and gave them all his property to hold it upon trust for the benefit of his widow for her life, and thereafter to his two daughters *D* and *E* to be shared equally between them, and if *E* died without child or children then his daughter *D* should have the whole, or her children. The will appears to have been "home made" and no executors were appointed. In April, 1925, *A* died, and subsequently letters of administration with the will annexed were granted to *B* and *C* as universal legatees and devisees in trust. The widow died some little time ago, as also did one of the trustees. So far as is known, no assents have been made, and it would therefore appear that the legal estate is vested in the surviving administrator. Do you consider that, especially bearing in mind the lapse of time, a good title can be made by him as the surviving administrator, or do you consider it would be better for the property to be vested in *D* and *E* as tenants for life in view of the possible gift over, and a new trustee appointed? *D* and *E* have received the rents and profits for many years.

*A.* First, there is no question of vesting the legal estate in *D* and *E* as tenants for life under the Settled Land Act, 1925. The reference in the will to "share equally" constitutes them tenants-in-common, i.e., they are entitled in undivided shares. This being so, immediately on the death of the widow, by virtue of s. 36 of the Settled Land Act, 1925, a trust for sale arose, i.e., there was no longer a strict settlement: see s. 1 (7) of the Settled Land Act, 1925, inserted by the Law of Property (Amendment) Act, 1926. Second, a good title can be made by the surviving administrator as such, despite the lapse of time, since a purchaser can and must accept a statement made under s. 36 (6) of the Administration of Estates Act, 1925, of no prior assent: *Re Spencer and Hauser's Contract* [1928] Ch. 598.

# NOTES AND NEWS

## Honours and Appointments

Mr. Colin Peter Barlow, third assistant solicitor, has been promoted to second assistant solicitor, in the town clerk's department, Wolverhampton. He succeeds Mr. Ronald Braithwaite Tweed, who was recently appointed senior assistant solicitor in Portsmouth town clerk's department.

Mr. Norman John Lee Brodrick, Q.C., has been appointed deputy chairman of the Court of Quarter Sessions for the county of Middlesex.

Sir Arthur John Edward Craig has been appointed custos rotulorum of the Soke of Peterborough, Northamptonshire, for a further term of two years.

Mr. John Patrick Graham, Q.C., has been appointed deputy chairman of the Court of Quarter Sessions for the county of Salop.

Brigadier Thomas Grainger-Stewart, C.B., M.C., T.D., has been appointed a member of the Restrictive Practices Court.

Mr. George Kenneth Mynett has been appointed recorder of the city of Stoke-on-Trent.

Mr. Harry Roach has been appointed an assistant official receiver for the bankruptcy district of the county courts of Bradford, Dewsbury, Halifax and Huddersfield, and also for the bankruptcy district of the county courts of Leeds, Harrogate, Scarborough, Wakefield and York, effective from 13th July.

## COLONIAL LEGAL APPOINTMENTS

The following appointments are announced by the Colonial Office: Mr. E. G. Blandford, registrar of the High Court, Northern Rhodesia, to be puisne judge, Aden; Mr. W. E. Jacobs, legal draftsman, Trinidad, to be solicitor-general, Barbados; Mr. A. E. Otto, resident magistrate, Northern Rhodesia, to be puisne judge, Northern Rhodesia, and Mr. T. Pickett, senior resident magistrate, Northern Rhodesia, to be puisne judge, Northern Rhodesia.

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## Wills and Bequests

His Honour Myles Archibald, retired county court judge, of Rusland, near Ulverston, Lancs., who was admitted in 1923 and called to the Bar (Inner Temple) in 1934, and sat as a county court judge from 1952 to 1958, left £34,554 net.

Mr. Vivian Francis Crowther-Smith, retired solicitor, formerly Comptroller of the Chamber of the City of London and Bridge House Estates, and who died on 13th April, left £14,601 net.

Mr. David Francis Morgan, solicitor, of Oxshott, Surrey, left £27,089 net.

Mr. Philip George William Sowman, solicitor, of Wimbledon, left £126,432 net.

## HIGH COURT OF JUSTICE: LONG VACATION, 1961

### Notice

During the vacation, up to and including Thursday, 31st August, all applications "which may require to be immediately or promptly heard" are to be made to the Hon. Mr. Justice Widgery.

*No application which does not fall strictly within this category will be dealt with.*

### Chancery Division

*Court Business.*—The Hon. Mr. Justice Widgery will sit in Queen's Bench Court II, Royal Courts of Justice, at 10.30 o'clock on Wednesdays, 2nd, 9th, 16th, 23rd and 30th August, for the purpose of hearing such applications of the above nature as, according to the practice in the Chancery Division, are usually heard in court.

*Papers for use in Court.*—The following papers for the Vacation Judge are required to be left with the cause clerk in attendance at the Chancery Registrars' Office, Room 136, Royal Courts of Justice, before 1 o'clock, two days previous to the day on which the application to the judge is intended to be made:—

(1) Counsel's certificate of urgency or note of special leave granted by the judge.
(2) Two copies of notice of motion, one bearing a 5s. impressed stamp.
(3) Two copies of writ and two copies of pleadings (if any).
(4) Office copy affidavits in support and in answer (if any).

No case will be placed in the judge's paper unless leave has been previously obtained or a certificate of counsel that the case requires to be immediately or promptly heard, and stating concisely the reasons, is left with the papers.

N.B.—Solicitors are requested when the application has been disposed of, to apply at once to the judge's clerk in court for the return of their papers.

### Queen's Bench Division

*Queen's Bench Chambers Business.*—The Hon. Mr. Justice Widgery will sit for the disposal of Queen's Bench Business in Queen's Bench Court II, at 10.30 o'clock on Tuesdays, 1st, 8th, 15th, 22nd and 29th August.

### Probate, Divorce and Admiralty Division

Summonses will be heard by the Registrar at the Probate and Divorce Registry, Somerset House, every day during the vacation (Saturdays excepted).

The Hon. Mr. Justice Widgery will sit for the disposal of Probate and Divorce business in Queen's Bench Court II, at 10.30 o'clock on Thursdays, 3rd, 10th, 17th, 24th and 31st August.

Motions and judges' summonses may be entered by leave of a registrar on or before 2 o'clock on the Thursday of each week for hearing on the following Thursday.

Papers for motions may be lodged at any time before 2 o'clock on the preceding Thursday.

The offices of the Probate and Divorce Registries will be opened at 10 a.m. and closed at 4 p.m. except Saturdays.

*Urgent matters when the Judge is not present in Court or Chambers.*—When the judge is not present in court or chambers, application may be made if necessary, but only *in cases of real urgency*, to the judge personally. The address of the judge must first be obtained at Room 136, Royal Courts of Justice, and telephonic communication to the judge is not to be made except after reference to the officer on duty at Room 136. Application may also be made by prepaid letter, accompanied by the brief of counsel, office copies of affidavits in support of the application and a minute on a separate sheet of paper signed by counsel, of the order he may consider the applicant entitled to, and also an envelope, sufficiently stamped, capable of receiving the papers, addressed as follows: "Chancery Official Letter: To the Registrar in Vacation, Chancery Registrars' Chambers, Royal Courts of Justice, London, W.C.2."

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## PERFORMING RIGHT TRIBUNAL

Mr. C. C. W. Havell, a former vice-chairman of the Imperial Tobacco Co., Ltd., has been appointed a member of the Performing Right Tribunal for two years from 7th July. Mr. W. Evans, C.B.E., resigned his membership of the tribuna on 14th July.

## LARGEST LIBEL DAMAGES

Twice last week records were broken in respect of the amount of damages for libel awarded by British juries. The plaintiffs in both cases were the same. Mr. John Lewis and Rubber Improvement, Ltd., of which company he is chairman and managing director, brought actions against the *Daily Telegraph* and Associated Newspapers, Ltd., in respect of reports published respectively in that paper and the *Daily Mail* in December, 1958, to the effect that the police "Fraud Squad" were investigating Mr. Lewis' company. On 19th July a jury awarded Mr. Lewis £25,000 and the company £75,000 in respect of the report in the *Daily Telegraph*, and on 21st July another jury gave damages of £17,000 to Mr. Lewis and £100,000 to the company in the action against Associated Newspapers, Ltd. A stay of execution against a possible appeal was granted in each case.

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## THE LAW SOCIETY'S PRELIMINARY EXAMINATION

At The Law Society's Preliminary Examination held on 3rd July, ten out of thirty-three candidates passed.

# PRACTICE DIRECTION

## PROBATE, ADMIRALTY AND DIVORCE DIVISION

### Summonses: Transfer from Solicitors' to Counsel's List

Where, in a summons for hearing by a Registrar of the Divorce Registry, issued in the solicitors' list, the party to whom the summons is directed intends to be represented by counsel, that party should notify the applicant of his intention and arrange for a fresh time of hearing to be fixed. Application should be made to the clerk to the Registrar who will fix the fresh time between 12 noon and 1 p.m. on the day already fixed for the hearing or, if this is not possible, refer the matter to the Registrar. Notice of the fresh time for hearing must be given to the applicant.

B. Long,
*Senior Registrar,*
*Principal Probate Registry.*

18*th July*, 1961.

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## PRINCIPAL ARTICLES APPEARING IN VOL. 105

7th to 28th July, 1961

For list of articles published up to and including 30th June, see Index to Pt. I of vol. 105



"THE SOLICITORS' JOURNAL"

*Editorial, Publishing and Advertising Offices:* Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. Telephone: CHAncery 6855.

*Annual Subscription:* Inland £4 10s., Overseas £5 (payable yearly, half-yearly or quarterly in advance).

*Classified Advertisements* must be received by first post Wednesday.

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**Brighton.**—FRANK STONE & PARTNERS, F.A.L.P.A., 84 Queen's Road. Tel. Brighton 29252/3.

**Brighton and Hove.**—WILLIAM WILLETT, LTD., Auctioneers and Estate Agents, 52 Church Road, Hove. Tel. Hove 34055. London Office, Sloane Square, S.W.1. Tel. Sloane 8141.

**Brighton, Hove and Surrounding Districts.**—MAURICE P. HATCHWELL, F.R.I.C.S., F.A.I., Chartered Surveyor, Chartered Auctioneer and Estate Agents, 4 Bartholomews, Brighton, 1. Tel. Brighton 23107.

**Brighton, Hove and Surrounding Districts.**—C. HORTON LEDGER, F.A.I., Established 1885 Chartered Auctioneer and Estate Agent, Surveyor and Valuer, "Sussex House," 126/7 Western Road, Hove, Tel. Sussex 1291.

**Chichester and Bognor Regis.**—WHITEHEAD & WHITEHEAD, Chartered Auctioneers and Estate Agents, South Street, Chichester. Tel. 3031 (5 lines). Station Road, Bognor Regis. Tel. 2237/8.

**Crawley.**—WM. WOOD, SON & GARDNER, Estate Agents, Surveyors and Valuers. Tel. Crawley 1.

**Crowborough.**—DONALD BEALE & CO., Auctioneers, Surveyors and Valuers. The Broadway. Tel. Crowborough 3333.

**Eastbourne.**—FRANK H. BUDD, LTD., Auctioneers, Surveyors, Valuers, 1 Bolton Road. Tel. 1860.

**Eastbourne.**—A. C. DRAYCOTT, Chartered Auctioneers and Estate Agents, 12 Gildredge Road. Tel. Eastbourne, 1285.

**Eastbourne.**—HEFFORD & HOLMES, F.A.I., Chartered Auctioneers and Estate Agents, 51 Gildredge Road. Tel. Eastbourne 7840.

**Eastbourne.**—OAKDEN & CO., Estate Agents, Auctioneers and Valuers, 24 Cornfield Road. Est. 1897. Tel. 1234/5.

**Eastbourne and District.**—FARNHAM & CO., Auctioneers, Estate Agents and Valuers, 6 & 44 Terminus Road, Eastbourne. Tel. 4433/4/5. Branch at 73 Eastbourne Road, Lower Willingdon, and 4 Grand Parade, Polegate.

**East Grinstead.**—Messrs. P. J. MAY (P. J. May and A. L. Apthorp, F.R.I.C.S., F.A.I., M.R.San.I.), 2 London Road. Tel. East Grinstead 315/6.

**East Grinstead.**—TURNER, RUDGE & TURNER, Chartered Surveyors. Tel. East Grinstead 700/1.

**Hassocks and Mid-Sussex.**—AYLING & STRUDWICK, Chartered Surveyors. Tel. Hassocks 882/3.

**Hastings, St. Leonards and East Sussex.**—DYER & OVERTON (H. B. Dyer, D.S.O., F.R.I.C.S., F.A.I.; F. R. Hynard, F.R.I.C.S.), Consultant Chartered Surveyors, Estd. 1892. 6-7 Havelock Road, Hastings. Tel. 5661 (3 lines).

**Hastings, St. Leonards and East Sussex.**—WEST (Godrey, F.R.I.C.S., F.A.I.) & HICKMAN, Surveyors and Valuers, 50 Havelock Road, Hastings. Tel. 6688/9.

**Haywards Heath and District.**—DAY & SONS, Auctioneers and Surveyors, 115 South Road. Tel. 1580. And at Brighton and Hove.

**Haywards Heath and Mid-Sussex.**—BRADLEY AND VAUGHAN, Chartered Auctioneers and Estate Agents. Tel. 91.

**Horsham.**—KING & CHASEMORE, Chartered Surveyors, Auctioneers, Valuers, Land and Estate Agents. Tel. Horsham 3355 (3 lines).

**Horsham.**—WELLER & CO., Surveyors, Auctioneers, Valuers, Estate Agents. Tel. Horsham 3311. And at Guildford, Cranleigh and Henfield.

**Hove.**—DAVID E. DOWLING, F.A.L.P.A., Auctioneer, Surveyor, Valuer & Estate Agent, 75 Church Road, Hove. Tel. Hove 37213 (3 lines).

**Hove.**—PARSONS, SON & BASLEY (W. R. De Silva, F.R.I.C.S., F.A.I.), 173 Church Road, Hove. Tel. 34564.

(*Continued on p. xxi*)

## REGISTER OF
# *Auctioneers, Valuers, Surveyors, Land and Estate Agents*

### SUSSEX (*continued*)

**Hove and District.**—WHITLOCK & HEAPS, Incorporated Auctioneers, Estate Agents, Surveyors and Valuers, 65 Sackville Road. Tel. Hove 31822.

**Hove, Portslade, Southwick.**—DEACON & CO., 11 Station Road, Portslade. Tel. Hove 48440.

**Lancing.**—A. C. DRAYCOTT, Chartered Auctioneers and Estate Agents, 8-14 South Street, Lancing, Sussex. Tel. Lancing 2828.

**Lewes and Mid-Sussex.**—CLIFFORD DANN, B.Sc., F.R.I.C.S., F.A.I., Fitzroy House, Lewes. Tel. 4375. And at Ditchling, Hurstpierpoint and Uckfield.

**Seaford.**—W. G. F. SWAYNE, F.A.I., Chartered Auctioneer and Estate Agent, Surveyor and Valuer, 3 Clinton Place. Tel. 2144.

**Storrington, Pulborough and Billinghurst.**—WHITEHEAD & WHITEHEAD amal. with D. Ross & Son, The Square, Storrington (Tel. 40), Swan Corner, Pulborough (Tel. 232/3), High Street, Billinghurst (Tel. 391).

**Sussex and Adjoining Counties.**—JARVIS & CO., Haywards Heath. Tel. 700 (3 lines).

**West Worthing and Goring-by-Sea.**—GLOVER & CARTER, F.A.L.P.A., 110 George V Avenue, West Worthing. Tel. 8686/7. And at 6 Montague Place, Worthing. Tel. 6264/5.

**Worthing.**—A. C. DRAYCOTT, Chartered Auctioneers and Estate Agents, 8-14 South Street, Lancing, Sussex. Tel. Lancing 2828.

**Worthing.**—STREET & MAURICE, formerly EYDMANN, STREET & BRIDGE (Est. 1864), 14 Chapel Road. Tel. 4060.

**Worthing.**—HAWKER & CO., Chartered Surveyors, Chapel Road, Worthing. Tel. Worthing 1136 and 1137.

**Worthing.**—PATCHING & CO., Est. over a century. Tel. 5000. 5 Chapel Road.

**Worthing.**—JOHN D. SYMONDS & CO., Chartered Surveyors, Ravenue Buildings, Chapel Road. Tel. Worthing 623/4.

### WARWICKSHIRE

**Birmingham and District.**—SHAW, GILBERT & CO., F.A.I., "Newton Chambers," 43 Cannon Street, Birmingham, 2. Midland 4784 (4 lines).

**Coventry.**—GEORGE LOVEITT & SONS (Est. 1843), Auctioneers, Valuers and Estate Agents, 29 Warwick Row. Tel. 3081/2/3/4.

### WARWICKSHIRE (*continued*)

**Coventry.**—CHAS. B. ODELL & CO. (Est. 1901), Auctioneers, Surveyors, Valuers and Estate Agents, 53 Hertford Street. Tel. 22037 (4 lines).

**Leamington Spa and District.**—TRUSLOVE & HARRIS, Auctioneers, Valuers, Surveyors. Head Office: 38/40 Warwick Street, Leamington Spa. Tel. 1861 (2 lines).

**Sutton Coldfield.**—QUANTRILL SMITH & CO., 4 and 6 High Street. Tel. SUT 4481 (5 lines).

### WESTMORLAND

**Kendal.**—MICHAEL C. L. HODGSON, Auctioneers and Valuers, 10a Highgate. Tel. 1375.

**Windermere.**—PROCTER & BIRKBECK (Est. 1841), Auctioneers, Lake Road. Tel. 688.

### WILTSHIRE

**Bath and District and Surrounding Counties.**—COWARD, JAMES & CO., incorporating FORTT, HATT & BILLINGS (Est. 1903), Surveyors, Auctioneers and Estate Agents, Special Probate Department. New Bond Street Chambers. 14 New Bond Street, Bath. Tel. Bath 3150, 3584, 4268 and 61360.

**Marlborough Area (Wilts, Berks and Hants Borders).**—JOHN GERMAN & SON (Est. 1840), Land Agents, Surveyors, Auctioneers and Valuers, Estate Offices, Ramsbury, Nr. Marlborough. Tel. Ramsbury 361/2, And at Ashby-de-la-Zouch, Burton-on-Trent and Derby.

### WORCESTERSHIRE

**Kidderminster.**—CATTELL & YOUNG, 31 Worcester Street. Tel. 3075 and 3077. And also at Droitwich Spa and Tenbury Wells.

**Kidderminster, Droitwich, Worcester.**—G. HERBERT BANKS, 28 Worcester Street, Kidderminster. Tels. 2911/2 and 4210. The Estate Office, Droitwich. Tels. 2084/5. 3 Shaw Street, Worcester. Tels. 27785/6.

**Worcester.**—BENTLEY, HOBBS & MYTTON, F.A.I., Chartered Auctioneers, etc., 49 Foregate Street, Tel. 5194/5.

### YORKSHIRE

**Bradford.**—NORMAN R. GEE & HEATON, 72/74 Market Street, Chartered Auctioneers and Estate Agents. Tel. 27202 (2 lines). And at Keighley.

### YORKSHIRE (*continued*)

**Bradford.**—DAVID WATERHOUSE & NEPHEWS, F.A.I. Britannia House, Chartered Auctioneers and Estate Agents. Est. 1844. Tel. 22622 (3 lines).

**Hull.**—EXLEY & SON, F.A.L.P.A. (Incorporating Officer and Field), Valuers, Estate Agents, 70 George Street. Tel. 3399/2.

**Leeds.**—SPENCER, SON & GILPIN, Chartered Surveyors, 132 Albion Street, Leeds, 1. Tel. 30171.

**Scarborough.**—EDWARD HARLAND & SONS, 4 Aberdeen Walk, Scarborough. Tel. 834.

**Sheffield.**—HENRY SPENCER & SONS, Auctioneers, 4 Paradise Street, Sheffield. Tel. 25206. And at 20 The Square, Retford, Notts. Tel. 531/2. And 91 Bridge Street, Worksop. Tel. 2654.

### SOUTH WALES

**Cardiff.**—DONALD ANSTEE & CO., Chartered Surveyors, Auctioneers and Estate Agents, 91 St. Mary Street, Tel. 30429.

**Cardiff.**—S. HERN & CRABTREE, Auctioneers and Valuers. Established over a century. 93 St. Mary Street. Tel. 29383.

**Cardiff.**—J. T. SAUNDERS & SON, Chartered Auctioneers & Estate Agents. Est. 1895. 16 Dumfries Place, Cardiff. Tel. 20234/5, and Windsor Chambers, Penarth. Tel. 22.

**Cardiff.**—JNO. OLIVER WATKINS & FRANCIS, Chartered Auctioneers, Chartered Surveyors, 11 Dumfries Place. Tel. 33489/90.

**Swansea.**—E. NOEL HUSBANDS, F.A.I., 139 Walter Road. Tel. 57801.

**Swansea.**—ASTLEY SAMUEL, LEEDER & SON (Est. 1863), Chartered Surveyors, Estate Agents and Auctioneers, 49 Mansel Street, Swansea. Tel. 55891 (4 lines).

### NORTH WALES

**Denbighshire and Flintshire.**—HARPER WEBB & CO., (incorporating W. H. Nightingale & Son), Chartered Surveyors, 35 White Friars, Chester. Tel. 20685.

**Wrexham, North Wales and Border Counties.**—A. KENT JONES & CO., F.A.I., Chartered Auctioneers and Estate Agents, Surveyors and Valuers. The Estate Offices, 43 Regent Street, Wrexham. Tel. 3483/4.

# ★ Classified Advertisements ★

**PUBLIC NOTICES—INFORMATION REQUIRED—CHANGE OF NAME**
**4s. per line as printed**

**APPOINTMENTS VACANT—APPOINTMENTS WANTED—PRACTICES AND PARTNERSHIPS and all other headings**
**15s. for 30 words. Additional lines 4s. Box Registration Fee 2s. extra**

**Advertisements should be received by first post Wednesday for inclusion in the issue of the same week and should be addressed to THE ADVERTISEMENT MANAGER, SOLICITORS' JOURNAL, OYEZ HOUSE, BREAMS BUILDINGS, FETTER LANE, E.C.4. CHAncery 6855**

## PUBLIC NOTICES

### CORPORATION OF MANCHESTER

MANCHESTER TOWN CLERK'S DEPARTMENT

EXPERIENCED CONVEYANCING CLERKS required. Knowledge of Chief Rents is desirable but local government experience not essential. Salary £960 rising to £1,140. Starting point according to experience. Particulars of age, education, qualifications and experience to Town Clerk, Town Hall, Manchester, 2, by 14th August.

### CLACTON URBAN DISTRICT COUNCIL

Applications are invited for appointment of ASSISTANT SOLICITOR at a salary within Grade A.P.T. IV–V of National Salary Scales (£1,140–£1,480 per annum) according to successful applicant's ability and experience.

Previous local government experience will be an advantage.

The appointment is superannuable, subject to medical examination, one month's notice on either side and otherwise to the National Scheme of Conditions of Service.

In an appropriate case, the council will be prepared to assist the successful applicant with the provision of housing accommodation within the district, either by letting a suitable property to the person concerned or by making an advance of up to 100 per cent. of the valuation, made on behalf of the council, to enable such person to purchase a new property, and to pay reasonable removal expenses incurred.

Further particulars and form of application may be obtained from the undersigned.

Forms of application, duly completed, must be delivered to me not later than Saturday, 26th August, 1961.

Canvassing, directly or indirectly, will disqualify.

CHARLES B. HEARN,
Clerk of the Council.

Town Hall,
Clacton-on-Sea.

### BOROUGH OF WEMBLEY

(*a*) APPOINTMENT OF LEGAL ASSISTANT (A.P.T. IV: £1,140–£1,310).

(*b*) APPOINTMENT OF JUNIOR LAW CLERK (A.P.T. II: £815–£960).

Applications are invited for the above appointments.

Candidates for appointment (*a*) must possess a sound knowledge of conveyancing. Local Government experience not essential.

London "Weighting" Allowance is payable.

Housing accommodation cannot be provided.

Applications stating age, experience, present and past appointments, disclosing any relationship to a Member or Senior Office of the Council and giving the names and addresses of two referees, must reach the undersigned by 16th August, 1961.

Canvassing disqualifies.

N. CUMPSTY,
Town Clerk.

Town Clerk's Office,
Town Hall,
Wembley,
Middx.
19th July, 1961.

### KENT COUNTY COUNCIL

APPOINTMENT OF ASSISTANT SOLICITOR

Applications for the above-mentioned appointment are invited from suitably experienced solicitors. Salary Scale CD (£1,560–£1,975). The duties of the post will be mainly in connection with conveyancing and work of a kindred nature, and the candidate appointed will rank in seniority next to the Solicitor in charge of the conveyancing division in the County Clerk's Office.

Applications, in envelope endorsed "Appointment of Assistant Solicitor," giving full personal particulars and experience, together with the names and addresses of two referees, should be sent to the undersigned. Closing Date is Saturday, the 23rd September, 1961.

G. T. HECKELS,
Clerk of the County Council.

County Hall,
Maidstone.

### SOUTH-WESTERN GAS BOARD

ASSISTANT SOLICITOR

Applications are invited for the above pensionable appointment, at a salary commencing at £1,365 and rising to £1,525.

Particulars should be sent to the undersigned before 21st August, including the names of two referees.

R. GEOFFREY LAYCOCK,
Solicitor.

9A Quiet Street,
Bath.

### NEW SCOTLAND YARD

PROSECUTING SOLICITORS on permanent staff of Solicitor's Department. Age 24–40. Starting salary £1,150 at age 24 to £1,703 at age 35 (or over). Scale maximum £1,937. Non-contributory pension. Good prospects of promotion. No previous experience required of criminal prosecutions. Particulars from Secretary, Room 165 (LA), New Scotland Yard, S.W.1.

### BOROUGH OF MIDDLETON

(Population 57,000)

ASSISTANT SOLICITOR

Applications are invited for this appointment within salary Grade A.P.T. IV (£1,140–£1,310), commencing salary according to qualifications and experience. June finalists will be considered.

Duties include conveyancing and advocacy with opportunities for committee work. Middleton is a borough with expanding population, delegated education, health and planning functions and a central area redevelopment scheme.

The provision of housing accommodation will be considered, if required. A five-day week scheme is in operation.

Applications, with names of two referees, should reach the undersigned not later than 5th August, 1961.

FRANK JOHNSTON,
Town Clerk.

Town Hall,
Middleton,
Nr. Manchester.

### BOROUGH OF DUNSTABLE

Applications are invited from Solicitors for the appointment of DEPUTY TOWN CLERK. The salary payable will commence between £1,450 and £1,550 per annum with increments of £50 per annum. Temporary housing accommodation may be offered. Further particulars may be obtained from—and written applications should be received by 8th August, 1961, by—Town Clerk, Municipal Offices, High Street North, Dunstable, Beds.

### SOUTH EASTERN GAS BOARD

LEGAL ASSISTANT

Young Solicitor, preferably with two years' conveyancing and commercial admitted experience, required as Legal Assistant in the Solicitor's Department at the Board's Chief Office at Croydon. The post is pensionable and initially a salary of not less than £1,250 will be paid. Appointment as Assistant Solicitor to the Board in due course will be a possibility. Applications, giving details of age, education, training and experience, and quoting reference V110/1516, should be sent not later than 21st August, 1961, to the Personnel Manager, South Eastern Gas Board, Katharine Street, Croydon, Surrey.

### COUNTY BOROUGH OF NEWPORT

TOWN CLERK'S DEPARTMENT

CONVEYANCING CLERK

Conveyancing Clerk required, A.P.T. III (£960–£1,140 per annum). Commencing salary according to experience. Local government experience not essential. Tenancy of council house or flat if circumstances warrant. Approved furniture removal expenses paid. Five-day week.

Applications, giving age, full details of experience and qualifications, with names of two referees, to Town Clerk, Civic Centre, Newport, Mon., by 9th August, 1961.

### HAMPSHIRE

Applications are invited from Solicitors, Barristers and Justices' Clerks' Assistants for the superannuable post of Deputy Clerk to the Justices for the City of Winchester and the Winchester County and Droxford Petty Sessional Divisions as from the 1st December, 1961. Total estimated population 70,328. Present salary £940–£1,150 (Scale G). Office in Winchester. In approved cases, the committee are prepared to assist in meeting removal and other expenses.

Applications stating age, experience and qualifications, together with the names and addresses of two referees, should be sent to me not later than the 31st August.

G. A. WHEATLEY,
Clerk of the Magistrates' Courts Committee.

The Castle,
Winchester.

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# ★ Classified Advertisements ★

*continued from p. xxii*

**PUBLIC NOTICES—*continued***

**METROPOLITAN MAGISTRATES' COURTS**

Metropolitan Magistrates' courts require at least one barrister or solicitor called or admitted in England for pensionable post of CLERK. Both men and women may apply. Age limits 25 to 40 inclusive on 31st August, 1961. Commencing salary £1,045–£1,200 according to age. On completion of probation (normally one year) and subject to satisfactory service successful applicant would be regraded Deputy Chief Clerk, salary scale £1,425–£2,020. Prospects of future promotion to Chief Clerk, salary scale £2,545–£2,920. Applications, giving age, qualifications, experience and names of two referees by 17th August, 1961, to Senior Chief Clerk, Bow Street Magistrates' Court, W.C.2, from whom further particulars may be obtained.

**TRENT RIVER BOARD**

APPOINTMENT OF SENIOR LEGAL ASSISTANT (UNADMITTED)

Applications are invited for the above appointment at a salary range within A.P.T. Grades III–V (£960–£1,480 per annum). Commencing salary according to qualifications and experience. N.J.C Conditions. Five-day week.

Local Government experience is not essential but applicants must be able to carry through conveyancing and allied transactions without supervision and should have experience in general legal work.

Particulars of duties, conditions and method of application obtainable from the Clerk of the Board, 206 Derby Road, Nottingham, by 7th August, 1961.

**BOROUGH OF WEDNESBURY**

DEPUTY TOWN CLERK

Applications are invited from Solicitors for this Appointment on a salary scale £1,443 £50—£1,643, plus car allowance if appropriate.

Applicants should be competent conveyancers and have experience in advocacy. Experience in public administration would be desirable but is not a condition of appointment.

The Council operates a five-day working week.

Applications giving full particulars of education, professional training and experience with names and addresses of two referees to reach me by 19th August, 1961.

G. F. THOMPSON,
Town Clerk.

Town Clerk's Office,
Town Hall,
Wednesbury.

## APPOINTMENTS VACANT

NORWICH Solicitors with large and expanding practice require Assistant Solicitor on litigation and advocacy side. Salary according to experience and ability. Unadmitted common law clerk would be considered. Please write with full particulars.—Box 7917, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR required to take charge of small busy legal department of development company; work mainly conveyancing periodically involving substantial sums where accuracy and experience particularly important; abilities in wider sphere welcome for future prospects; South London; assistance with accommodation; good remuneration envisaged.—Please apply Box 7928, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CONVEYANCING Clerk required immediately in salary scale A.P.T. Grade II, £815–£960 p.a., commencing salary arranged according to experience, etc.—Apply at once to the Town Clerk, City Hall, Cardiff, giving experience, etc., and two referees.

## SOLICITOR

**NATIONAL COAL BOARD**

Applications are invited from Solicitors for a post in the National Coal Board Divisional Legal Department, Newcastle upon Tyne. The work of the department as a whole consists of conveyancing, litigation, commercial and general advisory work. The successful candidate will be expected to act as assistant to the Divisional Legal Adviser and his Deputy in an interesting variety of duties. Some advocacy in the County and Police Courts is also involved. Salary within range £935–£1,600 p.a. according to qualifications and experience.

Applications giving date of birth and full details of education, qualifications and experience to Divisional Chief Staff Officer, National Coal Board, Northern (N. & C.) Division, Whitley Road, Longbenton, Newcastle upon Tyne, 12, by 8th August, 1961. Please quote: S/1.

TAUNTON Solicitors require managing clerk to undertake primarily cashier and probate work; good terms will be offered to the right man.—Details of age, education and experience to Box 7929, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

EAST BERKS.—Assistant solicitor required to deal mainly with litigation in a busy and expanding practice; it is suggested that this post will be a good opportunity for a recently qualified solicitor, who will have an excellent opportunity for acquiring general experience. We think that a fair and reasonable salary is offered for this post.—Box 7930, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ASSISTANT Solicitor required by young principal; excellent prospects; varied work, including advocacy; salary £1,000–£1,500; South-West Midlands.—Box 7931, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOUTHEND-ON-SEA.—Solicitors require Assistant Solicitor for expanding practice, mainly conveyancing and probate, with opportunities for litigation and advocacy. Partnership prospects. Commencing salary not less than £900 or according to length of experience.—Box 7935, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CITY Solicitors have vacancy at their West End office for young Solicitor to assist partner in company; commercial and varied conveyancing, trust and taxation matters. Must be likely person to be considered for admission (free of payment) to partnership in due course. Write with full particulars of education, age, experience and an indication of salary required.—Box 7936, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

MANAGING CLERK required (over 30); capable of acting on own initiative and taking full charge of office when required; four-figure salary to right man; Gloucestershire.—Box 7932, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LEGAL Department of large public property company requires Conveyancing Managing Clerk. Salary by arrangement but not less than £1,000 per year.—Box 7936, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

PROBATE managing clerk required (male or female) by South-East London Solicitors; own office; minimum supervision or as required; Stenorette system; 3 weeks' vacation; salary according to experience.—Box 7320, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LITIGATION Managing Clerk required. Fully experienced, capable working on own initiative for progressive firm, London, W.1. 5-day week. Good salary.—Box 7935, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

GRANADA TV require SENIOR SECRETARY in London. Legal Department offices. This post involves supervision of staff of three, allotment and checking of work, etc., as well as acting as Personal Secretary to Company Solicitor. Good employment conditions. 5-day week.—Apply in writing to Personnel Officer, Granada TV Network, Ltd., 123 Regent Street, W.1.

LIVERPOOL.—Sole practitioner wants assistant with view to early partnership. Conveyancing, probate and general. Preference to local solicitor with some connections. State age, experience, salary required, etc.—Box 7914, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LEGAL Assistant (unadmitted) wanted in busy local government office. Excellent varied experience offered. Salary within the range £815–£960 per annum. Five-day week. Housing provided for married man, if required. —Apply Town Clerk, Darlington, with full particulars by 5th August.

CITY Solicitors require experienced Costs Clerk. Excellent salary for the right person. Pension scheme. Luncheon vouchers. Good holidays.—Box 7920, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

BEDFORDSHIRE.—Assistant Solicitor required by busy general practice, mainly for conveyancing and probate but willing to undertake some advocacy; newly admitted man considered. State age, experience and salary required.—Box 7918, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

INDUSTRIAL Group, Headquarters Birmingham, has vacancy for Solicitor in Secretarial Department. Position would suit recently-qualified solicitor desirous of making a career in industry. Conveyancing experience desirable. State age, experience, qualifications, present salary, and when available to Box 7922, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

BEDFORD.—Unadmitted Conveyancing Clerk required by busy general practice—supervision given if necessary. Write with full particulars.—Box 7919, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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# ★ Classified Advertisements ★

*continued from p. xxiii*

## APPOINTMENTS VACANT—*continued*

CITY Solicitors require male or female debt collecting clerk, with previous legal experience. No Sats. Good salary, L.V.'s and pension scheme.—Full details including age and experience, to Box 7915, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ADVOCACY.—London Solicitors to Motoring Organisation require Assistant Solicitor. Salary up to £1,350 according to experience. A newly qualified man with a talent for advocacy would be acceptable.—Box 7921, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LITIGATION.—Efficient clerk required to take charge of Solicitors busy debt collecting department. Good salary will be paid to the right person. Hol. 2366 or Box 7825, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ASSISTANT Solicitor (at least three years admitted, and under 35) wanted for litigation department of old-established firm with large agency practice. Approved superannuation fund; excellent prospects. Write stating age, experience and salary required.—Box 323, Reynells, 44 Chancery Lane, W.C.2.

LUTON Solicitors require Solicitor for expanding practice; would suit a finalist; financial assistance for house purchase if required; commencing salary dependent upon experience.—Apply Box 7926, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WIGAN.—Old-established Solicitors require Assistant, admitted or unadmitted—good knowledge and experience Conveyancing, Probate and General Practice. Work with or without supervision. Write stating age and experience.—Box 7927, Solicitors' Journal Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WEST SUSSEX.—Assistant Solicitor required to take charge of Litigation Department. Possibility of partnership later. Salary according to experience but not less than £1,250.—Box 7897, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SENIOR CONVEYANCER (admitted or unadmitted) capable of working with little or no supervision and preferably experienced in estate development required by old established firm in South of England. Substantial and progressive salary, excellent working conditions; pension and life assurance schemes, existing holiday arrangements honoured. Assistance with housing and removal expenses if necessary.—Particulars please to Box 7834, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

JUNIOR Assistant required by Portsmouth Solicitors.—Box 7878, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

YOUNG solicitor required for busy provincial practice with good opportunity for general experience. Commencing salary £950, or according to length of experience.—Apply Messrs. Austin & Carnley, 7 George Street West, Luton, Beds.

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Published Weekly 1s. 9d. Friday, July 28, 1961 Registered at the G.P.O. as a newspaper